First half brings profits for P/C insurers / 2

States' rule may broaden surplus lines cover / 3

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D&O cases highlight exec risk

'Fees on fees' at center of coverage rulings

By DAVE LENCKUS

NEW YORK—Conflicting court rulings in New York and Delaware on whether directors and officers liability insurance covers certain legal fees highlights the importance of executives obtaining corporate commitments to cover those fees, attorneys say.

With guidance from New York's highest court, a 2nd U.S. Circuit Court of Appeals panel has ruled that New York law obligates corporations to cover their executives' D&O defense costs but not the legal costs the executives incur while seeking reimbursement of their defense costs from their organizations. Those secondary legal costs are known as "fees on fees."

The 2nd Circuit panel issued its decision shortly after the Delaware Supreme Court ruled that corporations must cover all such legal costs.

The executive at the center of the New York litigation is asking the state's highest court to reconsider its advice to the 2nd Circuit panel in light of the Delaware Supreme Court's ruling. But defense attorney Howard I. Rhine, a partner with Feder, Kaszovitz, Isaacson, Weber, Skala, Bass & Rhine L.L.P. of New York, said the state court no longer has jurisdiction in the matter, because the 2nd Circuit panel refused to stay its July 23 decision and issued its final order Aug. 28.

More organizations incorporate in Delaware than in any other state; New York ranks second.

Regardless of the 2nd Circuit's ruling or how any state's law treats fees on fees, executives still can protect themselves against such poten-

See CONFLICT/page 35

Proposal may aid pension sponsors

Group offers a new funding formula

By JERRY GEISEL

WASHINGTON—A major employee benefits lobbying group is urging Congress to enact a new proposal designed to dramatically reduce companies' pension plan contributions and improve corporate cash flow.

The proposal calls for the creation of a new method to calculate pension liabilities, which form the basis for determining employer contributions to their plans.

The proposed new method would be based generally on the yields of long-term, highly rated corporate bonds, replacing the current practice of using of long-term U.S. Treasury bonds. This change would effectively allow employers to use a higher inter-

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Senate conferees on the terrorism bill include, clockwise from top, Sens. Sarbanes, D-Md.; Dodd, D-Conn.; and Schumer, D-N.Y.

House conferees include, clockwise from top, Reps. Oxley, R-Ohio; Kelly, R-N.Y.; and Shays, R-Conn.

Industry confident as conferees return

Hopes high for terror bill

By MARK A. HOFMANN

WASHINGTON— As lawmakers return to Washington this week, insurance industry observers are growing increasingly confident that Congress will send a federal terrorism insurance bill to the president before it adjourns this fall.

This is a marked change from the mood early this summer, when the prospect of legislating some sort of federal backstop for private insurers to cover losses from possible future terrorist attacks appeared all but dead. Despite the House of Representatives' swift approval of a terrorism insurance bill drafted by Financial Services Committee Chairman Mike Oxley, R-Ohio, and Capital Markets Subcommittee Chairman Richard Baker, R-La., last November, the Senate remained bogged down in disputes over what, if any, liability limitations a bill should contain.

Senate Democrats decided to push ahead with the bill without solving the tort questions, and the measure passed without a dissenting vote, even though a number of consumer organizations blasted it as a giveaway to insurers. With the passage of the Senate bill, both Houses named conferees to a committee to iron out the differences—which are significant—between the two approaches taken by the two Chambers. The conferees, though, did not begin work before Congress left for its August recess.

Insurance industry lobbyists aren't surprised at the pace of the process.

See TERROR/page 38

Late News

St. Paul reinsurance spinoff amends IPO

Platinum Underwriters Holdings Ltd., an entity created to spin off the ongoing reinsurance business of The St. Paul Cos. Inc., has filed an amended registration statement with the Securities and Exchange Commission, seeking to raise up to $924 million in an initial public offering. Bermuda-based Platinum had postponed an earlier offering in July, citing capital market conditions. In its latest SEC filing, Platinum said it plans to sell 34 million shares for between $22.50 and $23.50 a share.

Overseas Andersen unit settles Enron suit

Andersen Worldwide will pay $40 million to settle an Enron Corp.-related shareholder class-action lawsuit led by the University of California. The proposed settlement involves only Andersen Worldwide, an international umbrella organization for Andersen member firms. The settlement will not release from liability Andersen's main U.S. unit, Chicago-based Arthur Andersen L.L.P., which will remain a defendant in a suit pending in U.S. District Court in Houston. The suit alleges that Enron and Andersen executives defrauded investors by disseminating false financial statements.

Nursing home workers get ergo guidelines

The Occupational Safety and Health Administration has released ergonomics guidelines for the nursing home industry. OSHA said in a statement it is seeking written public comment by Sept. 30 on the guidelines, which "are intended to provide practical solutions for reducing ergonomic-related injuries and illnesses in nursing homes." OSHA said it will not use the industry-specific guidelines for enforcement and

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Spotlight:

INTERNATIONAL REINSURANCE

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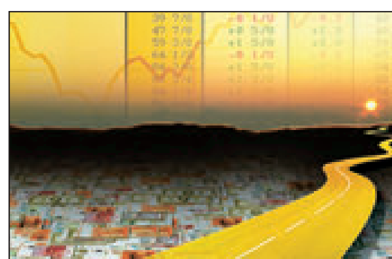

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NEWSPAPER

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Inside

Oklahoma withdraws RRG requirements

Advocates of risk retention groups succeeded in convincing Oklahoma regulators that federal law preempts requirements that the state imposed on RRGs licensed in other states.
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Turning browsers into buyers

Editor Paul Winston considers possible new features for the *BI* Web site that will give the people what–it seems–they want from the Internet.
Page 6

Medicare PPO plan worth a try

A pilot program that will broaden the Medicare+Choice program to include preferred provider organizations should benefit employers and the government alike, one of this week's editorials says.
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Aussie buyers slam terror cover plan

A plan to make terrorism risk insurance compulsory is drawing protests from Australian risk managers, who say it creates an unfair financial burden.
Page 29

Pension sponsors differ on changes

When it comes to setting policy for company stock in defined contribution plans, two recent surveys indicate many plan sponsors are unsure of what to do.
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REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFIT AND MANAGED HEALTH CARE NEWS

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Late News

CONTINUED FROM PAGE ONE
will take public comments into consideration.

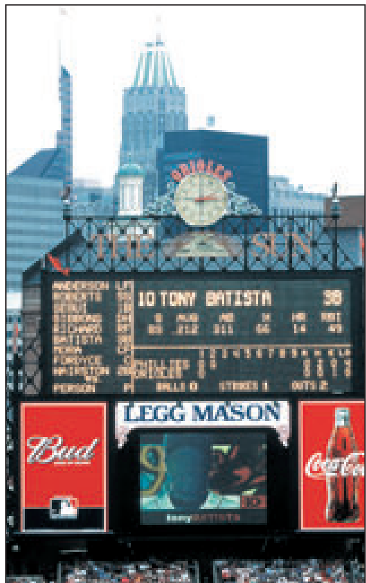


PHOTO: KRT

Camden Yards is among the Maryland facilities that faced nonrenewal of property coverage.

Royal fined, forced to cover state's property

Royal Insurance Co. of America cannot non-renew its property coverage for the state of Maryland, the Maryland Insurance Administration ruled. Royal must also pay a $125,000 fine for improperly non-renewing the $500 million property policy, which included coverage for stadium Camden Yards in Baltimore and Baltimore Washington International Airport. According to the state order reinstating coverage, Royal refused to renew the state's coverage following the Sept. 11 terrorist attacks, holding that it was unable to obtain sufficient reinsurance.

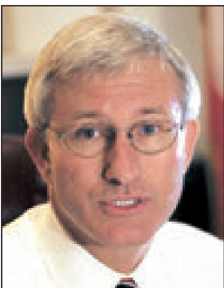
Calif. Assembly OKs bill to double tort time limit

The California Assembly passed a measure that would double, to two years, the state statute of limitations for filing personal-injury and wrongful-death lawsuits. S.B. 688 would apply retroactively to victims of the Sept. 11th terrorist attacks, according to an Assembly analysis of the bill. Sacramento observers expect quick Senate passage of the measure.

COBRA subsidy boosts beneficiaries: Survey

Eligible COBRA beneficiaries would be far more likely to opt for the coverage if their COBRA premiums were partially subsidized, a survey concludes. A telephone survey of 1,001 adults found that only 23% of respondents would be very likely to buy COBRA health care continuation coverage if they became eligible. But if beneficiaries had to pay only about 25% of the premium, 59% of respondents said they would likely opt for COBRA coverage. The survey was conducted by The Commonwealth Fund.

Mississippi to consider state-run insurer



Gov. Musgrove

Mississippi Gov. Ronnie Musgrove is calling for creation of a state-run medical malpractice insurer as part of a plan to provide relief to health care providers in the state. The governor's proposed Mississippi Care Access & Reliability Enhancement Act would create an insurer that would provide coverage to doctors, hospitals and nursing homes. Policies would be sold through insurance agents. Initial capital for the insurance company would come from a $10 million revenue bond.

PHOTO: AFP

Flooding of European rivers, including the Vltava River in the Czech Republic, is expected to result in insured losses exceeding $1 billion.

Losses estimated for European floods

Several major European insurers and reinsurers last week estimated their losses from extensive flooding in central and Eastern Europe. German insurer Allianz A.G. Holding said that it would record an estimated net loss of 550 million euros ($535.2 million); Munich Reinsurance Co. said its flood-related losses will likely not exceed 500 million euros ($490.0 million); and Swiss Reinsurance Co. said it did not expect its loss to exceed 250 million euros ($243.3 million).

Many workers consider modified duty: Survey

Half of a group of workers surveyed would be interested in returning to work in an alternative position if they were injured on the job, according to a survey sponsored by The Hartford Financial Services Group Inc. Among 610 working adults polled, 51% said they would be interested in returning to work in another position if they were temporarily unable to perform their original jobs. Twenty-three percent of respondents said they were unsure, and 26% indicated that they would not consider such an option.

Briefly noted

U.K. rail operator **Railtrack P.L.C.** and Aon Ltd. are exploring the creation of an insurance pool to offer employers liability coverage to rail maintenance companies, including Railtrack's contractors and subcontractors. Aon said talks were at an early stage and further details were unavailable....Bill Walker, chief executive officer of Hamilton, Bermuda-based **Hampton Re Holdings Ltd.**, is retiring. Hank Sulikowski, chief operating officer, will succeed Mr. Walker at the life reinsurer....After a management buyout, reinsurance broker Meadowbrook International Ltd. in Bermuda has reverted to its previous name of **Kirkway International Ltd.**

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To get breaking news as it occurs, visit *Business Insurance*'s free online Daily News, at *www.businessinsurance.com.* Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from Daily News postings that appeared on the *BI* Web site in the previous week.

Online this week:

- Share your remembrances of Sept. 11, 2001, in the **Online Forum** with other readers.
- Vote in the latest **Online Poll**: Should juries decide punitive damages?
- The Directory of International Reinsurers is available, along with other **searchable directories**.
- The latest weekly **commentary** from Editor Paul Winston joins that of other regular columnists.

Dropping interest rates, reserve concerns expected to reinforce underwriting discipline

Hard market likely to last through 2003

By JUDY GREENWALD

Commercial insurance buyers will likely have to endure the hard market at least through next year, if not beyond.

Although higher rates are beginning to flow down to the bottom line, lower interest rates—which hurt investment income—will prompt worried underwriters to keep rates up, analysts say. In addition, the need to maintain adequate reserves for asbestos-related losses, among other factors, will prolong the hard market, they note.

Meanwhile, first-half results for commercial property/casualty insurers were essentially in line with expectations, with income bolstered by the higher rates as well as light catastrophe losses.

Property/Casualty
Six-month
RESULTS

The 15 major commercial property/casualty insurers surveyed by *Business Insurance* that report this data posted an 82% increase in aggregate net income, to $6.1 billion, for the first half of 2002.

Other key results from the 17 insurers *BI* surveys are:

- Fueled by rate hikes, net premiums written increased 17.1%, to $54.59 billion.
- Insurers' aggregate combined ratio for the first half improved to 101.4%, compared with 111.3% for the prior-year period.
- Policyholder surplus declined 1.7%, to $53.97 billion.

"The second quarter was a continuation of the progress we saw in the first quarter and that we had seen last year," except for the effects of the Sept. 11 attacks, said Michael Smith, an analyst with Bear Stearns & Co. in New York. "Written premiums for the companies I follow were up about 20% year over year, and that was fairly consistent with what we saw in the first quarter.

"Combined ratios continued to improve, although they actually backed up a little bit in the second quarter compared to the first quarter. I think some of that was seasonal, since we saw the same thing last year," Mr. Smith said. In addition, "cash flows were remarkably better. As a result of the improving cash flow, we're beginning to see some

See RESULTS/page 36

Disputed rights to spy character triggers coverage battle

'Bond' begets bad-faith suit

By JOANNE WOJCIK

LOS ANGELES—An insurance coverage battle, triggered by a nearly 40-year fight over ownership of the film rights to fictional superspy James Bond, will go to trial in Los Angeles this month, unless a settlement is reached by the end of next week.

After winning one of the longest-running copyright disputes in history last August over who created the on-screen image of the world-famous fictional spy—American writer Kevin McClory or British author Ian Fleming—Metro-Goldwyn-Mayer Inc. and Danjaq L.L.C., which collectively hold the rights to the James Bond character and films, now face a lawsuit from their insurer, seeking to rescind coverage for defense costs they have incurred.

Anchorage, Alaska-based American International Specialty Lines Insurance Co. maintains that it has the right to revoke the $50 million blanket entertainment errors and omissions policy it issued to MGM in 1997 because the studio did not disclose the "potential" of litigation over Agent 007 ownership rights. Danjaq, the production company on the Bond films, is an additional insured under MGM's policy.

MGM claims it had an agreement with the underwriter, though, that potential or threatened claims need not be disclosed, and that MGM's loss runs for the previous five years would be sufficient to bind coverage.

In its countersuit against AISLIC, MGM seeks not only reimbursement of approximately $7 million in defense costs but also punitive damages for bad faith from the insurer and its parent company, New York-based American International Group Inc.

So far, the court hearing the coverage dispute has ruled in favor of MGM and Danjaq on two issues: that the policy rescission was improper and that AISLIC breached its duty to defend. The issue of bad faith against AISLIC and AIG will be decided at trial, as well as whether the parent can be held respon-

See BOND/page 33

PHOTO: ZUMA

The 1965 film "Thunderball," starring Claudine Auger as Domino and Sean Connery as James Bond, is part of a complex insurance coverage dispute.

P/C mandates spark concern

Surplus lines insurers required to cover fire risks in some states

By MEG FLETCHER

About a dozen states have decided that all corporate insurance buyers—even those who purchase surplus lines coverage—should be protected by mandatory standard fire policy wording, a recent survey finds.

Regulators in these states, in effect, have required that both admitted and nonadmitted insurers include such coverage in their policies, observers say.

As a result, risk managers in those states may have more complete coverage for fire losses—one of the most-feared outcomes of a terrorist attack—than they had realized.

But the unprecedented regulatory involvement in the surplus lines market can "create paralysis" in underwriting the commercial property risks—such as high-risk buildings—that the market has traditionally handled, said Richard Bouhan, executive director of the National Assn. of Professional Surplus Lines Offices in Kansas City, Mo.

"The situation is complex," said Paul Springman, executive vp of Markel Corp. in Richmond, Va., which owns several surplus lines companies that collectively are eligible to write coverage in all states. His company is working with NAPSLO, which Mr. Bouhan said is currently contacting regulators in person and in writing to explain the industry's concerns.

Historically, states have required each surplus lines insurer to be admitted in one state and to obtain additional regulatory acceptance of its claims-paying ability from other states to be eligible to write business. Regulators also have controlled surplus lines brokers, though no states except New Jersey have any authority to review surplus lines insurers' forms or rates.

Insurance consumers benefit from the requirement that surplus lines insurers use the standard fire policy form, because it provides coverage for most direct fire-related losses that would result from a terrorist act. Consequently, the form "can signifi-

See FIRE/page 37

Former Near North CEO fights state suspension of his licenses

By RODD ZOLKOS

CHICAGO—Michael Segal, former chairman and chief executive officer of Near North National Group, will seek judicial review of the California Department of Insurance's suspension of his nonresident agent licenses.

The suspension order affects Mr. Segal's life agent and his fire and casualty broker-agent licenses in the state. The order, which the California department announced late last month, had been filed in July. It stems from a federal grand jury indictment handed down in February.

PHOTO: AP/WIDE WORLD

Mr. Segal

That indictment charged Mr. Segal with one count of insurance fraud for allegedly causing Chicago-based Near North National Insurance Brokerage Inc. to file a false statement to Illinois regulators concerning an insurance premium trust fund account. The suspension order says that the indictment charged him with failure to properly maintain premiums in a premium trust fund account as required by Illinois law, and that the premium trust fund account was in deficit.

A spokeswoman for the California department attributed the six-month time difference between the indictment and the state's suspension order to "making sure the indictment would stand—that it wouldn't change—plus case load."

In a statement, Mr. Segal, who denies any wrongdoing, noted that California is the only state to take such action and that the suspension applies only to him, not Near North or any of its licenses.

Lloyd's readying for vote on market reform proposals

By SARAH VEYSEY

LONDON—Lloyd's of London has made some changes to proposed market reforms in response to comments from market participants.

The Chairman's Strategy Group proposals, which were circulated to the market's roughly 16,000 participants earlier this year, are designed to modernize the Lloyd's market and to promote greater transparency and profitability. Market participants are scheduled to vote on the plans at an extraordinary general meeting on Sept. 12.

The reform proposals include the abolition of unlimited liability underwriting, the switch to annual accounting from Lloyd's three-year system and the creation of a franchise system for the market.

Under that system, which aims to improve regulatory oversight, Lloyd's would act as franchisor, setting guidelines on underwriting, risk management and service standards and overseeing syndicate business plans, among other things.

Lloyd's said that market participants have expressed considerable support for the franchise proposal, which calls for replacing the Lloyd's Market Board and the Lloyd's Regulatory Board with a new Franchise Board.

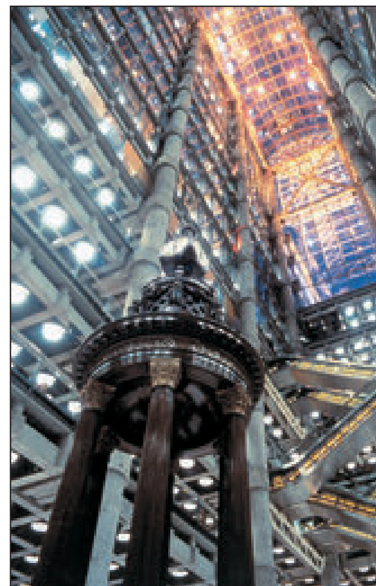

PHOTO: NEWCAST

Lloyd's of London is set to vote on proposals to reform the 314-year-old insurance marketplace.

But, in response to member comment, Lloyd's said the proposal will now also include the formation of a committee to monitor the delegation of authority to the Franchise Board and to ensure that members' interests are protected.

In addition, although there was some resistance to the proposal to move to annual accounting, Lloyd's said it is confident that the change would be enacted. And despite some participants' dismay about the elimination of unlimited liability, Lloyd's said that proposal would remain intact.

Lloyd's Chairman Sax Riley said Lloyd's is pleased with the high level of support for the reforms. "That support will, I'm confident, translate into a vote strongly in favor of implementation," he said.

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Risk retention groups win round in Oklahoma

By JERRY GEISEL

OKLAHOMA CITY—Risk retention groups operating in Oklahoma but licensed in other states will no longer be required to post a $300,000 surety bond before doing business in the state and will be exempt from a $600 antifraud fee that other insurers must pay.

State insurance regulators, responding to the complaints of risk retention groups that said the surety bond requirement was illegal under federal law, have agreed to scrap it.

In addition, the state's $600 antifraud fee, which RRGs have long fought, will no longer be imposed following passage of legislation, requested by the Oklahoma Department of Insurance, exempting the groups from the fee.

RRG advocates hailed the two actions as an example of regulatory responsiveness to their arguments.

"I'd like to think the department gave fair consideration to the points we raised," said Jon Harkavy, vp and general counsel in the Arlington, Va., office of Risk Services L.L.C., a captive and RRG management firm, which protested the surety bond and antifraud assessments on behalf of clients.

Mr. Harkavy had told Oklahoma regulators that the Risk Retention Act, the federal law that authorized RRGs, explicitly pre-empted nondomiciliary states from imposing fees and any other requirement, except those set out by the federal law, such as payment of applicable premium taxes, on the groups. RRGs are multiple owner captives which can write casualty coverage—except workers compensation—for member-owners across the United States after meeting the licensing requirements of one state.

This broad pre-emption of a nonlicensing state's requirements was upheld several years ago by the 5th U.S. Circuit Court of Appeals. In a 1997 decision, that federal appeals court struck down a Louisiana law that required RRGs, among other things, to post a $100,000 bond or cash deposit and pay a $1,000 fee before they could operate in Louisiana. Mr. Harkavy brought the ruling to the attention of Oklahoma regulators.

"We took a look at the statute and case law and made the decision to stop enforcement," a spokesman for the Oklahoma Department of Insurance said.

The department also responded to the complaints of RRGs regarding the $600 antifraud fee. The fees are imposed on insurance entities licensed by the state, but the RRGs said they were exempt because they are not licensed by Oklahoma but by other states.

"They (RRGs) had a legitimate point," the spokesman said.

The RRGs' victory in Oklahoma follows other successful battles by RRGs against the efforts of states to impose fees and other requirements on them that violate the federal law.

The most recent victory occurred last year, when a federal judge in Kalamazoo, Mich., ruled that the Risk Retention Act pre-empted Michigan from imposing a 0.5% fee on premiums paid by policyholders in Michigan for coverage written by RRGs licensed in other states (*BI*, Dec. 10, 2001).

In 1997, the Maryland Insurance Administration, after protests from the National Risk Retention Assn., a trade group that represents RRGs and purchasing groups, dropped a $1,000 fee it initially tried to impose on RRGs to support its efforts to fight insurance fraud.

In addition, most purchasing groups that responded to a year 2000 computer readiness survey conducted by the Indiana Insurance Department refused to pay a $650 fee the department billed them on behalf of the private contractor that analyzed the survey data. Purchasing groups are entities that band together to buy coverage from an insurer.

While the state fees involved often have been small, the groups say that if left unchecked they could threaten their ability to operate nationwide. Fees can be a significant bar to coming into a state where a group, for example, has just a few members, RRG advocates note.

Such fees, advocates say, violate the spirit if not the actual letter of the RRA. The RRA, buyers say, bars states from imposing rules or regulations, other than those spelled out in the law, on RRGs licensed out of state.

For purchasing groups, the RRA pre-empts state rules or law that discriminate against the groups. For example, if a state imposes a registration fee on purchasing groups, but not on other insurance buyers, the fee would discriminate against purchasing groups and be pre-empted by the federal statute.

This federal pre-emption of state law was deliberate, advocates say. Congress, responding to the product liability crisis of the late 1970s, when coverage in the traditional market dried up, and to the broader liability insurance crunch of the mid 1980s, wanted to give buyers a fast, low cost way of creating their own insurance entities. An RRG, after meeting the licensing requirements of one state, can operate nationwide without meeting the licensing and other requirements of the other states.

Nearly 80 RRGs now are operating, a number that has been increasing steadily over the last year as more buyers, in the face of escalating premiums in the traditional market, organize RRGs.

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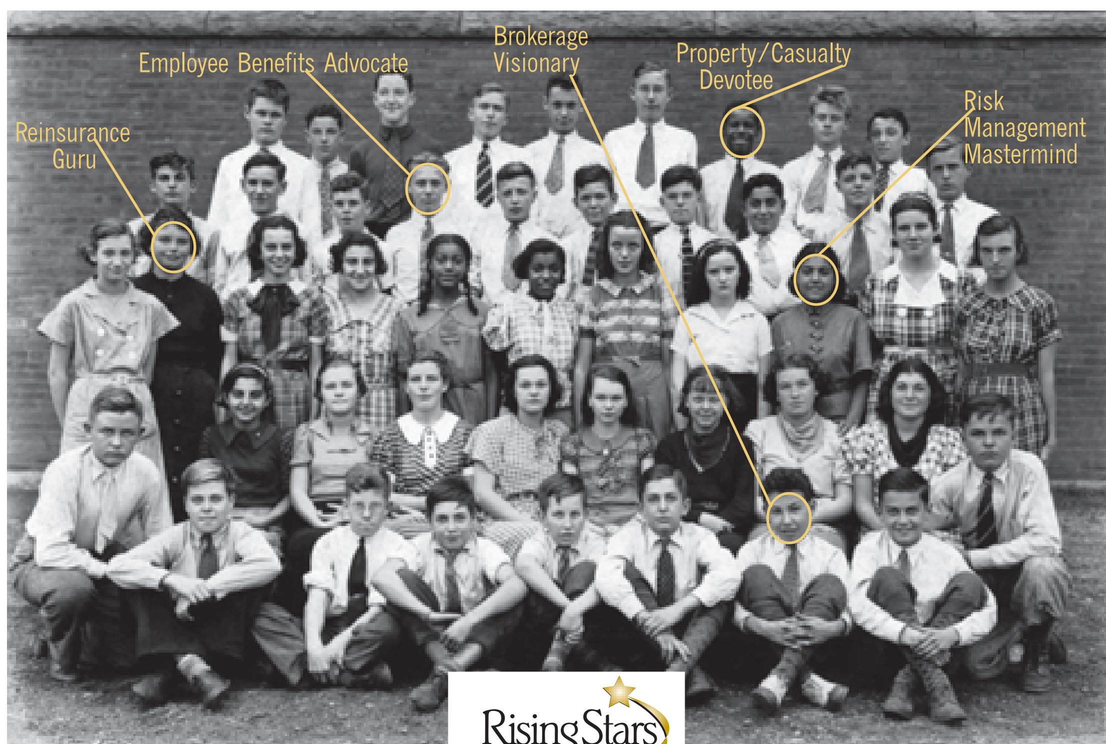

Rising Stars 35

Join us as we mark *Business Insurance's* 35th anniversary and honor thirty-five executives—insurers, reinsurers, brokers, risk management and benefits consultants, as well as claims administrators—who represent some of the best brains behind the commercial insurance business. These are the men and women who are making an impact and will shape the market for years to come.

Save the date and honor your colleagues: Wednesday, October 16, 2002. Mark the time to recognize the best and the brightest: 11:30 a.m. And note the place to join in a unique celebration for our industry: The Plaza Hotel, New York City.

For reservations and sponsorship opportunities contact Pat Ghazvini at 212-210-0137 or email pghazvini@crain.com

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Paul Winston

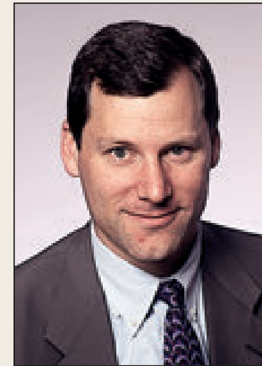
Turning browsers into Web buyers

The Internet economy may lie buried under a pile of bricks and mortar, but people have not stopped surfing the Web.

Indeed, people continue to plug into the Web in significant numbers. What's different about today compared with the heady days of the late 20th century, is that fewer people are making money with their Internet ventures.

As a media organization with a Web site, you can be sure we pay attention to such trends. And, as a for-profit company, we, like hundreds of thousands of other dotcoms, are still trying to figure out how to parlay online interest into a little Internet alchemy.

A recent report by the Online Publishers Assn. might show the way.



Paul Winston

The report, released last month and reported in the trade journal Editor & Publisher, found that Americans spent $675 million for online content in 2001, up 92% over the previous year's spending levels. And, spending continued to grow in the first quarter of 2002, according to the OPA, rising more than 100% compared with the year-earlier period.

In addition, the number of Americans using their credit cards to pay for online content has grown significantly, with 12.4 million card transactions recorded in the first quarter, up from 5.3 million in the first quarter of 2001.

So, contrary to conventional wisdom, people not only are still browsing the Internet but also are opening their wallets more often.

What are they spending their money on? The OPA found that the three biggest content categories–which together accounted for 59% of spending last year–were business content, entertainment (which I suspect is a euphemism for pornography) and personals/dating services sites.

While BI.com has the first category well covered, it's clear that if we want a bigger share of all that money that people are tossing around the Web, we will have to spice things up a bit.

For ideas on how to do that, I perused the OPA's list of some of the top sites garnering money for consumer content. They included such sites as *matchmaker.com, match.com, ancestry.com and weightwatchers.com.*

This tells me that BI.com ought to be doing more to allow insurance consumers and providers to exchange personals and meet each other. In short, a *BI* Dating Service.

Everyone knows what a hurdle it is to overcome an insurance-related career when trying to spark a romance. Providing a way to meet other people who not only understand insurance but might love you in spite of it could be a real money-maker.

My second insight from the list of top sites is that people are paying money to find out who their relatives are. One of the principal ways they do this is by visiting sites such as *ancestry.com*, which offers reams of data–including birth, death, census and military records–to help people trace their relatives and compare notes on how to find those skeletons in the woodpile.

BI.com could develop a database of insurance claims paid over the past couple of centuries, linking to old industry legacy systems. People could troll this new source of genealogical data and add a new dimension to their family research. Who wouldn't pay to learn that their great-great-uncle Fester was denied a claim for the removal of a goiter in 1876? Or that a long-lost cousin somehow filed 342 claims for whiplash in California during the 1980s?

The remaining top site tells me that people will pay for someone else to tell them what and how much to eat. This suspicion is bolstered by all the recent media hysteria over the Atkins Diet and other name-brand eating plans.

BI staff attend a lot of insurance industry events and meetings, where they learn a lot about what insurance people tend to eat. We could draw upon this knowledge to develop a new *Business Insurance* Diet and charge people money for lists of what they should be eating.

Based upon a preliminary review of past industry dining habits, the *BI* Diet involves smoking cigars, drinking scotch and eating lots of overcooked beef tenderloin and dry mashed potatoes. Plus plenty of rolls with butter. The secret is the precise quantity of each, information for which we would charge handsomely.

It may take a while for us to get budgetary approval to make these additions to our Web site, but stay tuned. Better yet, send us your credit card information now, and we'll get started on building the Web site that you really want.

Editor Paul Winston's commentary now appears weekly and on www.businessinsurance.com. He can be reached at pwinston@crain.com.

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Editorial

Medicare PPOs worth a try

WHY SHOULD the only health care plans that Medicare makes available to beneficiaries be traditional indemnity program or health maintenance organizations?

More types of plans should be made available and we're glad to see the Bush administration agrees. Next year, in a three-year demonstration to test its viability, preferred provider organizations will be offered to 11 million Medicare beneficiaries in 23 states.

Under the arrangement, 33 health plans will make their PPOs available to beneficiaries who decide to opt out of the traditional Medicare indemnity program.

As an inducement to get the plans to participate, the government will reinsure the plans for losses if the plans lose money but will also share some of the savings if the PPOs deliver care at less cost than predicted.

The plans not only will offer benefits provided under the traditional Medicare program, but also additional ones like prescription drugs and certain preventive services.

This experiment comes at a time when efforts to modernize Medicare have faltered. Enrollment in Medicare HMOs, once seen as a way of cutting government costs, has declined in recent years with HMOs pulling out of dozens of markets. HMOs have cited inadequate payment rates for their withdrawals as well as cumbersome red tape.

But even if the government boosts payment rates for HMOs, many retirees, just like active employees, won't enroll because they want more freedom to choose their providers than traditional HMOs offer.

That is where PPOs come in. Enrollees receive a higher level of benefits if they receive treatment through the PPO's network, but they always have the option of going outside the network. That plan design should prove appealing to Medicare beneficiaries, just as it has for active employees.

Employers with retiree health care plans that supplement Medicare have a direct interest in the outcome of the PPO demonstration project. They may find it less expensive to pay the PPO premiums for beneficiaries than offer their own plans that supplement Medicare. And for the government, it may find its costs for beneficiaries less compared to providing coverage in its traditional Medicare program.

In view of those possibilities, this is a project definitely worth trying.

OSHA makeover needed

FOR MANY YEARS, the Occupational Safety and Health Administration has been high on the list of federal agencies that employers truly love to hate.

They viewed it as nit-picky at best and downright obtuse at worst. An ill-fated attempt to promulgate a national workplace ergonomics standard despite employer, insurer and congressional opposition did nothing to burnish the agency's image, particularly after Congress took the unprecedented step of voting to overturn the standard.

OSHA's recent announcement that it would undergo a major reorganization, therefore, is a step that ought to raise its standing among employers. Among other changes, OSHA is creating two new offices that should help employers comply more effectively with its requirements: the Office of Outreach Services and Alliances and the Office of Partnerships and Recognition. Both will work with the employer community, as will a new Office of Small Business Assistance.

By making moves to be more business-friendly, the agency is not compromising its commitment to promote the safest possible workplaces. In fact, it's strengthening that commitment.

The vast majority of employers recognize their moral as well as legal obligation to keep workers out of harm's way. The OSHA reorganization should allow employers to fulfill that obligation more readily. And in doing so, the changes will allow OSHA to target its limited resources more effectively so that the agency can go after the truly bad actors that willfully disregard their duty to maintain safe workplaces.

For the overwhelming majority of employers, the OSHA reorganization should help change their perception of the agency. The emphasis on outreach will make the agency appear to be less of a necessary evil and more of a partner in the effort to assure that the nation's workers carry out their jobs under the safest possible conditions.

Schillerstrom

Letters to the Editor

Ward's findings surprising, but not completely

To the editor: The recent summary of Ward Group's findings regarding the low value of risk management and loss control, presented in the Aug. 26 article, "Ward Compares the Best with the Rest," came as both a surprise and not a surprise.

John Ward was quoted as saying, "It's a little counterintuitive. Commercial companies like to invest in loss control, but few are really able to demonstrate a return on investment."

For high-performing insurers to admit a low return by reducing their investment in loss control is a little like heresy. In that respect, I am surprised. And by direct experience, I am familiar with insurers reducing the level of their service.

On the other hand, I am not surprised that the best have discovered that the methods used traditionally—which are virtually the only methods at their disposal—have been ineffective. The long tradition of routine inspections in the company of corporate safety managers and safety teams has been colossally ineffective at reaching the correct audience with solid reliable data. Namby-pamby, feel-good reports stating that the management has a good attitude, coupled with half-baked data about loss and frequency trends since the last visit, have been of no value to the people that really run the show and, most importantly, control the corporate budget.

Assuming this discovery is replicated by the lesser performers, we can expect that loss control services from the insurance industry shall be on the decline. And I would venture a guess that routine services offered by the broker community will also be on the decline. In the absence of catastrophe, there is no end to inspection reports that go unread and are never acted upon.

During the last market cycle, corporate management saw no benefit in making improvements that yielded no reduction in premium dollars. Naturally, there should have been a correlation, but in the absence of reasoned underwriting practices, the correlation between loss control and insurance cost was lost.

In over a decade as risk manager at one company, I saw an upgraded sprinkler system justified only on the basis of immediate return on investment; a decision that was driven by a reinsurance surcharge. Without clear and convincing economic evidence of the immediate economic return on investment, the value of investing in loss control will fall on deaf ears.

Will the Age of Reason now return? Will a new equilibrium be achieved wherein intelligent underwriting will surface the logical relationship between risk management and insurance costs? When the relationship becomes obvious, will executives take notice? You bet they will. Risk management and loss control will enjoy a few years in the sun until insurers begin again to compete for market share and make up for the losses in the equity mar-

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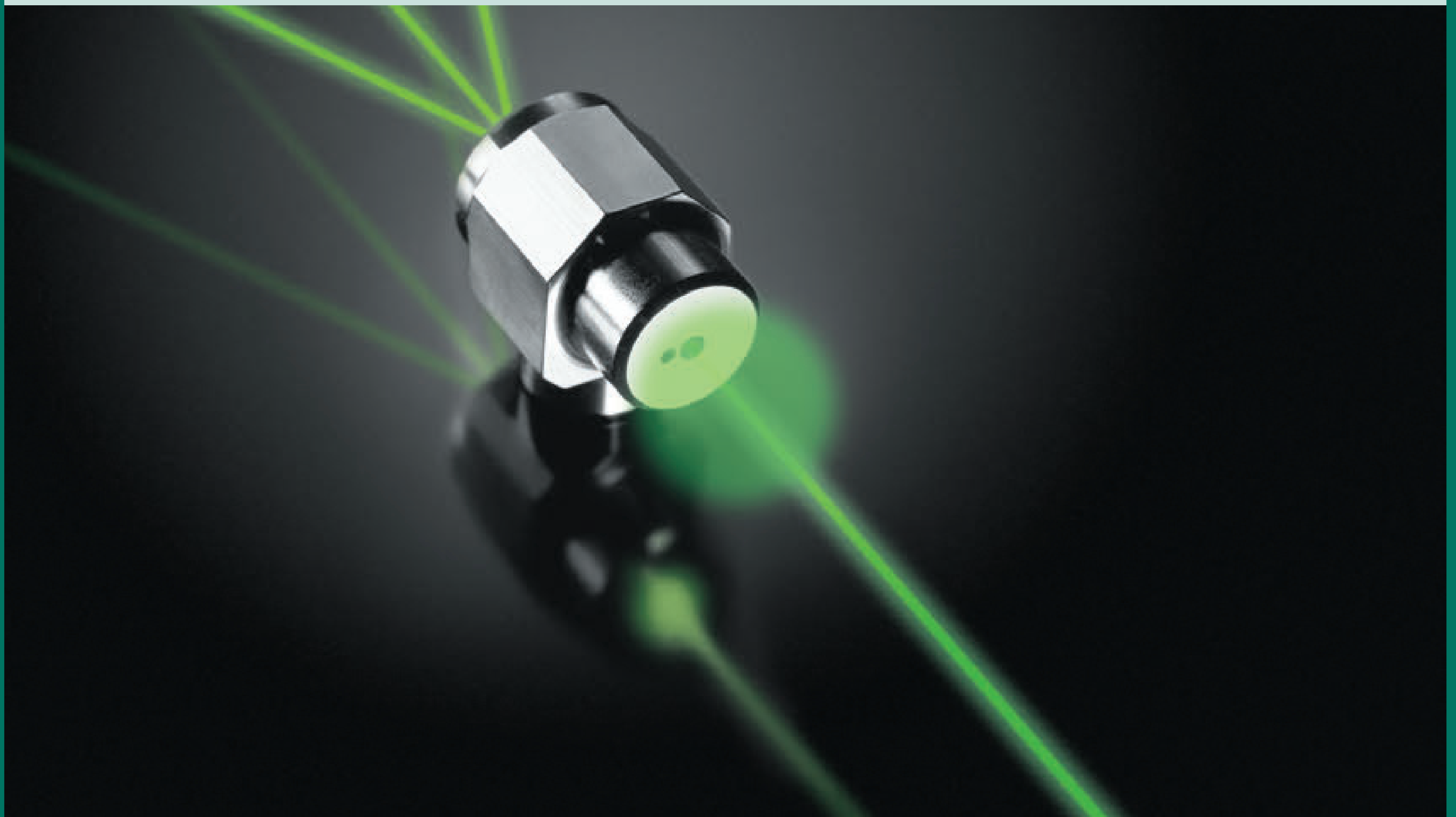

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INTERNATIONAL REINSURANCE

Spotlight Editor: Rodd Zolkos

End of road not in sight for global hard market

By RODD ZOLKOS

Hard market pricing and conditions remain the norm across the board in the worldwide reinsurance markets, and there are growing indications that the hard market will continue for some time to come.

Reinsurance coverage is generally available, but only if the price is right, as reinsurers are insisting on getting the premium that exposures technically demand.

And what is more significant, some observers say, is that the new capital that has entered the market in the wake of the Sept. 11 terrorist attacks is showing the same discipline, even in the face of the return-on-investment expectations of those putting up the funds.

"I am a lot more optimistic about the sustainability of the hardening market than I was even six to nine months ago," said James H. Veghte, president, chief operating officer and chief underwriting officer at XL Re Ltd. in Hamilton, Bermuda. "There clearly is capacity out there to write business, but that capacity is being used responsibly."

"The pricing continues to improve," Mr. Veghte said. In addition, coverage "conditions are changing, and those are changes that tend to last even more than pricing increases," he said.

"I think we will see prices continue to increase," said Mark P. Lescault, head of the divisional underwriting office at Swiss Re Americas Corp. in Armonk, N.Y. "We still have escalating loss costs," he said.

"But I do think you are going to see a certain amount of moderation by line of business," Mr. Lescault said. "Property's probably a good example: I think there's been tremendous progress toward getting pricing at a level that meets true loss costs."

Casualty, on the other hand, "still needs a lot of attention," Mr. Lescault said. In casualty lines, "the correction started later and hasn't been as strong yet, so I think it has to continue."

Pricing may have "kind of hit a plateau on, at least, the property cat side," said Stephen Bolland, senior vp at intermediary Gill & Roeser Inc. in New York. "But I think the pricing level is being maintained—there's no sign of any softening," he said.

Capacity remains available, but only at the right price for the risk

Pricing and capacity trends for July 1 renewals were "very similar to year end," Mr. Bolland said. At the "right price, there is a lot of capacity available. But if the price falls below the market, it dries up completely."

"Obviously, in some areas, the pricing is taking a big hike, but I would say, even in the worst of areas, all the capacity is there that you could possibly need," he said.

Casualty lines showed the biggest price increases at July 1 renewals, according to Swiss Re's Mr. Lescault. "Umbrella excess, (directors and officers liability)—I think people were better understanding the price levels that were needed and were pressing hard to get them where they need to be," he said.

Recent corporate scandals in the United States and the possible impact on D&O coverage could fuel further hardening in casualty reinsurance markets.

"If you look at the potential for not just the financial loss but also the D&O, if it hits the insurance industry, it's going to spill over into the reinsurance industry," said James P. Bryce, president and chief executive officer of IPCRe Ltd. in Pembroke, Bermuda.

"The D&O issue will be big," said Mr. Bolland. "But that's been a hard market now for quite some time."

Long term, though, the D&O market should benefit from better risk management practices in the wake of the scandals, Mr. Lescault said.

One key aspect of the current hard market is that it crosses all lines, XL Re's Mr. Veghte said. "The interesting part of it now is it's a marketwide phenomenon, rather than just a catastrophe phenomenon," he said.

Although prices have risen across the board, the extent of the increases has not been uniform, observers note.

There has been "tremendous variability" in the size of price increases this year, according to Mr. Lescault, "based on what the particular line of business is and what the specific risk is."

See MARKET/page 18

Capital influx not leading to lower prices

By JUDY GREENWALD

The several billion dollars of capacity offered by new Bermuda reinsurers is a welcome addition to a tight market, even though it is not driving down prices.

Because of the hardening market and the withdrawal of capacity by existing reinsurers, the additional capital entering the market to date has not significantly dampened rate increases. Another factor keeping prices up is that many of the new reinsurers in the market are run by seasoned hands who are exercising pricing discipline.

Ultimately, though, many reinsurance observers predict that not all the new Bermuda companies will last, because their investors are more interested in short-term returns in the market, rather than a long-term investment. At least some of the new companies will likely be acquired, go out of business, change their strategy or become publicly held in the years to come, as investors withdraw.

Disciplined underwriting, some withdrawals keep market firm despite arrival of new capacity

That was the fate of the last wave of new reinsurers that set up in Bermuda, which saw eight property catastrophe reinsurers form in the wake of 1992's Hurricane Andrew. Of the original eight, only three remain independent companies and, of those, just two remain focused on property catastrophe business.

In contrast to the property cat specialists, the recently established reinsurers and insurers are writing a wide range of business (see story, page 15).

The new companies are "supplying needed capital and capacity to a substantially impaired market that is not only impaired in terms of capital but also in terms of underwriting skills," said John Charman, president and chief executive officer of AXIS Specialty Ltd., a new Bermuda-based insurer and reinsurer. AXIS was set up with $1.6 billion in capital by an investment fund managed by a unit of Marsh & McLennan Cos. Inc. Mr. Charman previously was CEO of ACE International in London and is a former underwriter at Lloyd's of London.

The new companies "are not competing on price. They are competing with the quality of their capital and the intellectual capital of the staff that they possess. We don't need to compete on price," Mr. Charman said. "We have solvency, security and expertise."

Sheila Nicoll, president and chief underwriting officer of new Bermuda reinsurer Olympus Reinsurance Ltd., said: "I think everybody's being very disciplined and careful about it, so I don't know that the new capital's had an impact on the pricing. Where it has had more of an impact is there's more capacity available for programs than maybe people expected back in November of last year."

Olympus was launched in February 2002 with $500 million in capital, with Leucadia National Corp. of New York its biggest shareholder. Ms. Nicoll, a former executive with

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S&P's top 25 reinsurer groups page 16

Regulatory harmony sought for E.U. page 20

London eager to stay a key market page 24

Capacity costly for non-U.S. cat risks page 27

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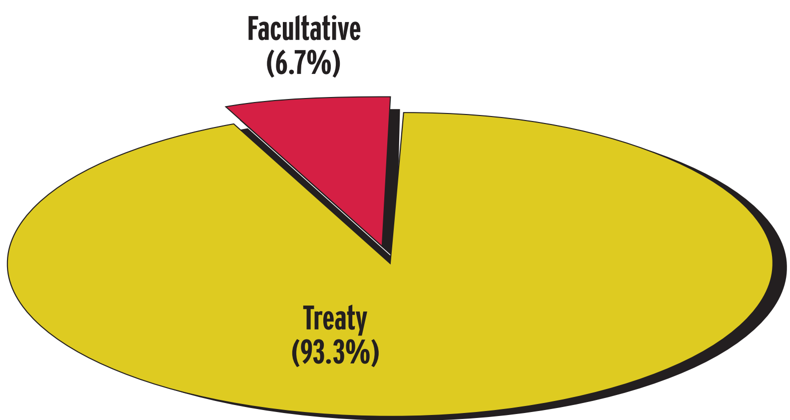
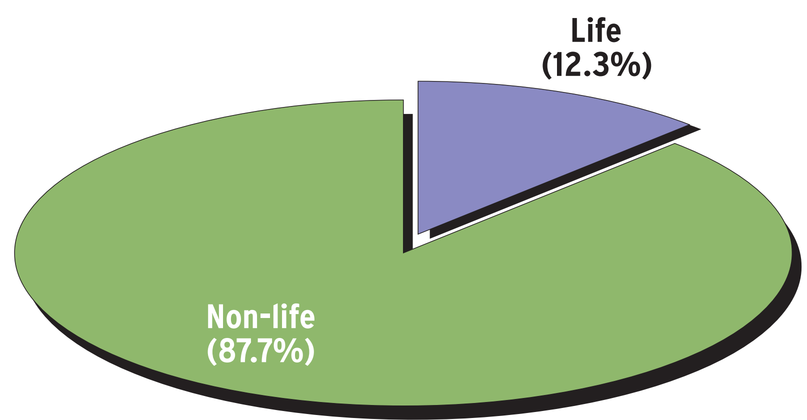
2001 REINSURANCE BUSINESS BY SOURCE



Source: *BI* survey

2001 REINSURANCE BUSINESS BY TYPE



Source: *BI* survey

World's largest reinsurers

Ranked by 2001 net premiums written

Rank	Company/Address	Phone/Fax/Web site	Net premiums written 2001	Net premiums written 2000	Net premiums written % change	Net premiums earned 2001	Net premiums earned 2000	Net premiums earned % change	Employees	Principal officer
1	Swiss Re Group Mythenquai 50/60, P.O. Box, Zurich CH8022, Switzerland	41-43-285-2481 fax: 41-43-285-2038 www.swissre.com	$15,283,072,000 [1]	$13,790,394,000 [1]	10.8%	$14,929,648,000 [1]	$13,049,871,000 [1]	14.4%	8,623	Walter B. Kielholz, CEO
2	Munich Re Group Königinstrasse 107, Munich 80802, Germany	49-89-3891-0 fax: 49-89-399056 www.munichre.com	$15,212,133,600 [2]	$13,473,954,000 [2]	12.9%	$16,604,169,600 [2]	$14,746,771,000 [2]	12.6%	5,872	Hans-Jürgen Schinzler, chairman-board of management
3	Berkshire Hathaway/ GeneralCologne Re [3] 100 First Stamford Place, Stamford, Conn. 06902-6745	203-363-5200 fax: 203-363-5221 www.berkshirehathaway.com, www.gcr.com	$11,983,000,000	$13,548,000,000	-11.6%	$11,344,000,000	$13,407,000,000	-15.4%	3,711	Ajit Jain, president-BHRG; Joseph P. Brandon, chairman/CEO-GeneralCologne Re
4	GE ERC Group 5200 Metcalf, P.O. Box 2991, Overland Park, Kan. 66201	913-676-5200 fax: 913-676-5380 www.ercgroup.com	$8,666,000,000	$8,342,000,000	3.9%	$7,185,000,000	$8,001,000,000	-10.2%	3,236	Ronald R. Pressman, CEO
5	Hannover Re Group Karl-Wiechert-Allee 50, Hannover 30625, Germany	49-511-5604-0 fax: 49-511-5604-1188 www.hannover-re.com	$6,353,826,127 [2]	$4,895,572,617 [2]	29.8%	$5,815,272,017 [2]	$4,808,999,832 [2]	20.9%	1,780	Wilhelm Zeller, chairman
6	Lloyd's of London 1 Lime St., London EC3M 7HA, England	44-207-327-1000 fax: 44-207-626-2389 www.lloydsoflondon.com	$5,700,816,000 [4]	$4,014,368,000 [4]	42.0%	NA	NA	NA	NA	Saxon Riley, chairman
7	Gerling Global Reinsurance Group Hohenzollernring 72, Cologne 50670, Germany	49-221-144-1 fax: 49-221-144-4665 www.gerling.com	$4,455,052,320 [2]	$4,035,632,900 [2]	10.4%	$4,334,468,880 [2]	$3,970,469,100 [2]	9.2%	1,136	Björn Jansli, chairman-executive board
8	SCOR Immeuble SCOR, 1 Ave. du Général de Gaulle, Paris la Defense F-92074, France	33-1-46-98-7000 fax: 33-1-47-67-0409 www.scor.com	$3,330,144,000 [2]	$2,656,394,000 [2]	25.4%	$3,270,165,600 [2]	$2,470,871,000 [2]	32.3%	1,345	Jacques Blondeau, chairman/CEO
9	AXA Corporate Solutions 69 Ave. Franklin Roosevelt, Paris 75008, France	33-1-56-43-9000 fax: 33-1-56-43-9126 www.axa-corporatesolutions.com	$2,515,512,000 [2]	$1,396,499,000 [2]	80.1%	$2,465,380,800 [2]	$1,284,816,000 [2]	91.9%	1,699	Philippe Donnet, CEO
10	Converium Ltd. [5] General Guisan Quai 26, Zurich 8022, Switzerland	41-1-639-9393 fax: 41-1-639-9090 www.converium.com	$2,482,600,000	$1,996,000,000	24.4%	$2,295,200,000	$1,861,500,000	23.3%	750	Dirk Lohmann, group CEO

1 Swiss franc=$0.592 (2001); $0.591 (2000). 2 Euro=$0.8952 (2001); $0.923 (2000). 3 Combined figures of Berkshire Hathaway Reinsurance Group and GeneralCologne Re. 4 British pound=$1.4396 (2001); $1.516 (2000). 5 Formerly Zurich Re.
Source: *BI* survey

The full Directory of International Reinsurers is available online in the Directories area of *www.businessinsurance.com.* The searchable directory allows users to locate international reinsurers by company name, net premiums written, net premiums earned and number of employees, among other items. The online database is free to subscribers of *Business Insurance.* PDF copies of the directory can be purchased online.

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Capital: Limited effect on pricing predicted

Continued from page 10

Marsh, most recently led a Bermuda-based online insurance recruitment venture.

"I think, to some extent, maybe the shock of rate increases has been diffused a little bit" by the new capacity, said Paul Ingrey, chairman and chief executive officer of new reinsurer Arch Reinsurance Ltd. in Bermuda.

But in certain areas, such as directors and officers liability, excess property and property catastrophe, "it's not having any effect at all," said Mr. Ingrey, who formerly was CEO of F&G Re. "I don't think that those rate increases were moderated significantly at all by the addition of new capital."

He added, though, that he'd "be a little bit surprised if the existence of the new capital doesn't to a small degree moderate the rate increases that may take place next Jan. 1."

Arch Re was established by Arch Capital Group Ltd. and backed by E.M. Warburg, Pincus & Co. L.L.C. and Hellman & Friedman L.L.C. with a total of $1 billion in capital.

> **'Some of (the new Bermuda companies) will be successful on their own as independent companies, some will be acquired and some will just close down.'**
>
> *Keith S. Hynes*
> *Max Re Capital Ltd.*

One reason the new reinsurers have not had more of an impact on pricing is that, to a degree, they are merely replacing capacity that has left the market.

"As much has you've had new reinsurers come in, you've had a lot of reinsurers sort of on hold," commented Donald Kramer, vice chairman of ACE Ltd. in Bermuda, who noted that each reinsurer had its own individual reasons for leaving the market.

Among the more recent withdrawals, Germany's Gerling Globale Re announced it would pull out of the U.S. property/casualty reinsurance market to concentrate on European risks. Before that, Copenhagen Re shut down operations, while Bermuda-based Overseas Partners Ltd. also shut down most of its operations.

Among other changes:

- The Hartford Re unit of Hartford Financial Services Group Inc. plans to focus on writing North American reinsurance business and limit its future international reinsurance underwriting.
- CNA Financial Corp. has put its London reinsurance unit up for sale.
- The St. Paul Cos. Inc. postponed a planned initial public offering of Bermuda-based Platinum Underwriters Holdings Ltd., which was spun off from St. Paul to acquire its ongoing reinsurance business.

Offsetting this trend are the new formations.

"The capital markets have a wonderful way of replacing capacity if there's a reasonable return available, and there's clearly a reasonable return available on property and casualty underwriting today," said Keith S. Hynes, executive vp and chief financial officer of Bermuda-based reinsurer Max Re Capital Ltd. Max Re, in partnership with German bank Bayerische Hypo-und Vereinsbank A.G., established a new Bermuda reinsurer, Grand Central Re Ltd., with initial capital of $200 million.

Although the additional capacity has been welcomed in the market, the new companies generally have not been lead reinsurers on treaties.

"They've been there mostly in a following capacity, not as lead," said Michael Smith, an analyst with Bear Stearns & Co. in New York. "The sense I get is they've been used mostly to fill gaps in coverage, that buyers are focusing on the experienced players and those players that have been in the market for a while and are committed to the market."

Over time, the new companies are expected to be transformed.

Max Re's Mr. Hynes noted that, of the original group of property cat reinsurers formed after Hurricane Andrew, only Renaissance Re Ltd. and IPCRe Ltd. remain focused on property cat business, and the third remaining company, PartnerRe Ltd., has expanded beyond its original specialty.

"I think you'll see the same with this group of companies," he said. "Some of them will be successful on their own as independent companies, some will be acquired and some will just close down" over a five-to-10 year time horizon.

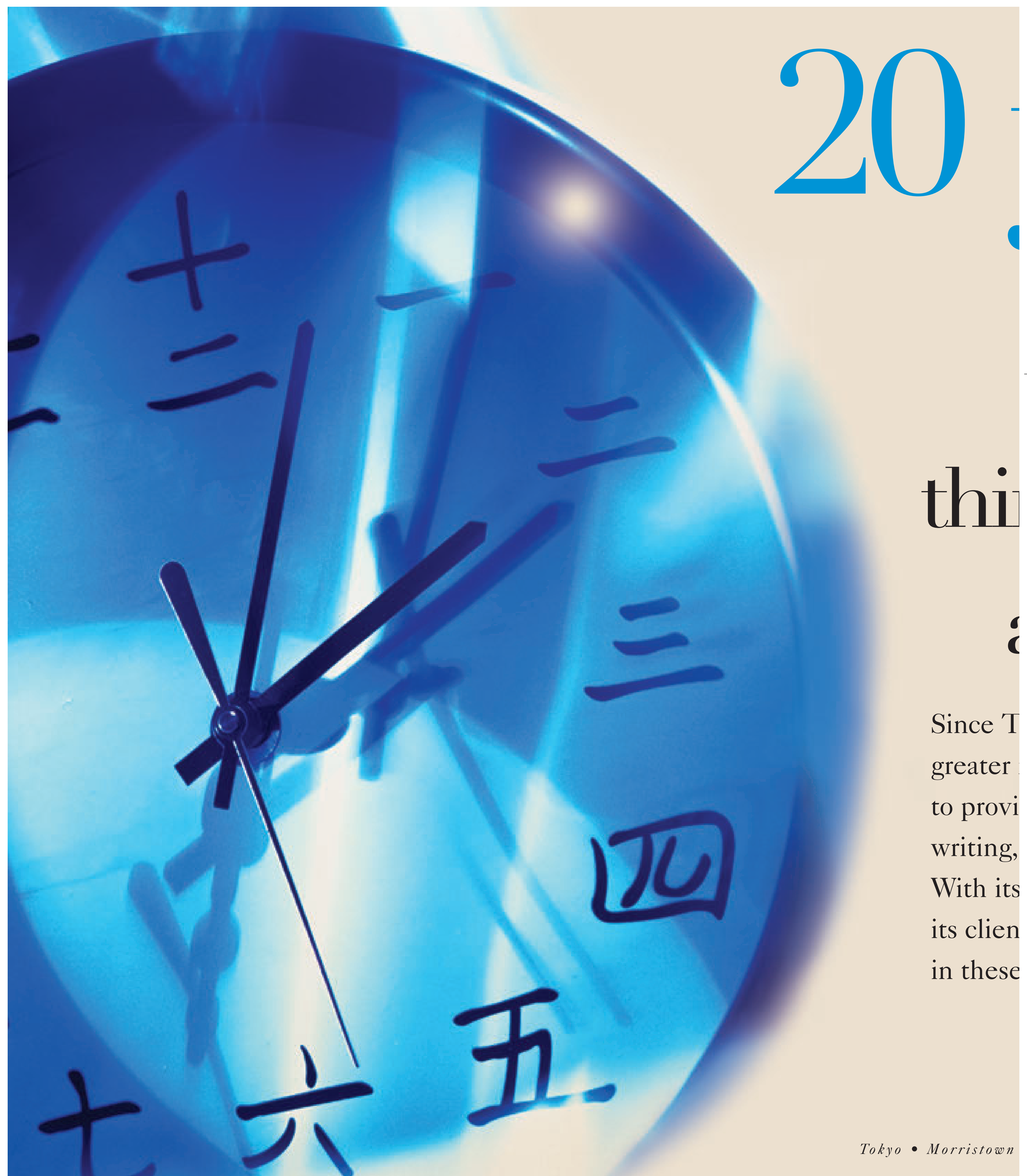
Some may also go public. In May, Montpelier Re Holdings Inc., which was organized by White Mountains Insurance Group Ltd. and began operations with $1 billion in capital, filed a registration statement with the Securities and Exchange Commission to raise $250 million in an initial public offering, though it has not yet proceeded with the IPO.

But not all are expected to change their mission.

"I have to think that these are seasoned veterans that have come into this business and they're going to be here" for the long haul, said ACE's Mr. Kramer.

Even the catastrophe reinsurers

Continued on next page



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Continued from previous page
that were taken over by others continue to operate as units of their acquiring companies, he said.

"These guys have not gone away, and I don't think the new generation is about to do it either," said Mr. Kramer, who became an executive with ACE after its 1996 acquisition of property cat reinsurer Tempest Re, for which he was CEO.

Jay Nichols, senior vp of Renaissance Re Holdings Ltd. in Bermuda, agreed. Renaissance Re, along with State Farm Mutual Automobile Insurance Co., Max Re and other investors, formed a new Bermuda reinsurer, DaVinci Reinsurance Ltd., with $500 million in capacity. Although the company may expand or contract depending upon the market, "it's not going to disappear," he said. "DaVinci promises to be there to provide capacity for the long term."

Investors will also play a major role in deciding the longevity of the new reinsurers, said Elizabeth Farrell, vp at Oldwick, N.J.-based A.M. Best Co. "Certainly, you wouldn't expect them to remain where they are, particularly where there's been private venture capital put in," Ms. Farrell said.

Venture capitalists now see reinsurance as a good opportunity in a market where other investments, particularly high-tech and telecommunications firms, are "pretty dismal options," she said. But, she added, they generally want to invest only for several years, then generate good returns when they turn their investment around.

"There are several people who have rubbed their crystal ball and have said what they think is going to happen," said Michael I.D. Morrison, president and chief executive officer of Allied World Assurance Co. Ltd., a $1.5 billion insurer and reinsurer that was created as a joint venture of American International Group Inc., Chubb Corp. and a Goldman, Sachs & Co. unit.

"I don't have such a crystal ball," said Mr. Morrison. "It's far too early, in my opinion, to hazard a guess" as to the staying power of the new companies. "A lot of things could affect the future," he said, "amongst which, I suppose, is how long this rising market will last."

Newcomers add variety

By JUDY GREENWALD

Unlike the specialized property cat reinsurers formed after Hurricane Andrew, the new crop of Bermuda reinsurers writes a variety of lines, including some primary coverage.

Among the new Bermuda companies are:

- **Allied World Assurance Co. Ltd.** Allied is not a reinsurer but an insurer with a reinsurance department, stressed Michael I.D. Morrison, its president and chief executive officer. In addition to having its own reinsurance department, which has written both proportional and excess-of-loss business, IPCRe Ltd. writes property catastrophe reinsurance on Allied's behalf, Mr. Morrison said.
- **Arch Re Ltd.** Most of Arch Re's business has been in casualty areas, including excess liability, directors and officers liability, medical stop loss, marine, aviation and energy, said Paul Ingrey, chairman and chief executive officer.
- **AXIS Specialty Ltd.** AXIS Specialty is writing predominantly property cat business, said President and Chief Executive Officer John Charman.
- **DaVinci Reinsurance Ltd.** DaVinci is writing primarily cat business, although "we have a nominal amount of other short-tail lines," said Jay Nichols, senior vp for Renaissance Re Holdings Ltd., which helped form DaVinci and manages and underwrites its business.
- **Endurance Specialty Insurance Ltd.** Endurance, which raised more than $1.2 billion in initial capital from investors, including Aon Corp. and Zurich Financial Services Group, reached an agreement in May to acquire the property cat business of LaSalle Reinsurance Ltd., a Trenwick Group Ltd. subsidiary.

  According to the company, its other lines of business include property insurance and per-risk insurance; excess general liability insurance and reinsurance; space and aviation insurance and reinsurance; directors and officers liability and reinsurance; hospital professional liability; and alternative risk transfers.
- **Goshawk Reinsurance Ltd.** Goshawk, a unit of London-based Goshawk Insurance Holdings P.L.C., is licensed to underwrite marine excess, nonmarine property catastrophe, marine retrocession, aviation excess and finite reinsurance. Goshawk Re is capitalized at about $140 million.
- **Grand Central Re Ltd.** Grand Central Re, which is managed by Max Re Capital Ltd., writes the same type of business as Max Re—structured financial reinsurance—and participates in most of the transactions in which Max Re participates, said Keith Hynes, Max Re executive vp and chief financial officer.
- **Montpelier Re Holdings Ltd.** According to a registration statement filed with the Securities and Exchange Commission for a planned initial public offering, the reinsurer plans to "craft a balanced portfolio of primarily property-related risks diversified across products, geographic areas of coverage, cedents and distribution sources."
- **Olympus Reinsurance Ltd.** Sheila Nicoll, Olympus' president and chief underwriting officer, said the reinsurer's business focuses on property catastrophe, excess and other short-tail reinsurance business. Its key relationship, she said, is a quota-share agreement with New York-based Folksamerica Reinsurance Co., a unit of White Mountains Insurance Group Ltd., for property cat and property excess business.

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Standard & Poor's top 25 reinsurer groups

Ranked by net reinsurance premiums written. Figures in millions of U.S. dollars.

		Net reinsurance premiums written			Expense ratio		Loss ratio		Pretax operating income	
Rank	Group, Country	2001	2000	% change	2001	2000	2001	2000	2001	2000
1	Munich Re Group, Germany	$16,610.7	$15,276.6	8.7%	30.6%	30.3%	104.5%	85.0%	$(1,783.9)	$529.8
2	Swiss Re Group, Switzerland	15,429.1	14,478.8	6.6	29.0	29.0	95.0	88.0	(1,654.9)	(384.7)
3	Berkshire Hathaway Re Group, United States	9,991.0	8,591.0	16.3	21.0	17.7	117.0	93.0	NA	NA
4	Employers Re Group, United States	7,047.0	7,924.0	-11.1	35.8	31.4	103.5	84.4	(983.0)	(11.0)
5	Hannover Re Group, Germany	6,287.2	4,994.3	25.9	18.6	20.8	89.2	85.8	10.2	224.9
6	Lloyd's of London, United Kingdom	5,746.1	3,952.9	45.4	NA	NA	NA	NA	NA	NA
7	Gerling Global Re Group, Germany	4,408.3	4,117.0	7.1	25.0	26.3	106.5	86.4	(895.2)	(62.8)
8	SCOR Re Group, France	3,651.3	2,809.8	30.0	30.0	31.0	94.0	90.0	(461.7)	(287.5)
9	Allianz Re Group, Germany	3,118.5	3,726.5	-16.3	34.3	32.9	93.0	76.0	(764.8)	185.7
10	AXA Re Group, France	2,489.1	1,424.7	74.7	29.6	40.4	97.5	80.2	(511.8)	(51.6)
11	Converium Re Group, Switzerland	2,482.6	1,996.0	24.4	29.7	29.8	100.2	86.2	(518.9)	(132.5)
12	Transatlantic Re Group, United States	1,905.6	1,658.6	14.9	27.7	26.5	87.2	73.4	(33.9)	234.9
13	PartnerRe Group, Bermuda	1,825.1	1,380.3	32.2	29.8	32.3	100.4	70.2	(277.8)	161.3
14	XL Re Group, Bermuda	1,708.2	1,022.2	67.1	21.9	35.9	122.6	74.3	(493.1)	213.5
15	St. Paul Re Group, United States	1,614.5	1,251.5	29.0	26.1	34.8	117.5	79.2	NA	NA
16	Everest Re Group, Barbados	1,560.1	1,218.9	28.0	31.1	27.6	82.4	75.3	112.7	230.9
17	Odyssey Re Group, United States	985.0	701.3	40.4	34.8	36.9	80.6	73.9	(29.0)	57.0
18	Toa Re Group, Japan [1]	950.7	942.4	0.9	31.0	34.9	59.4	69.4	(89.9)	25.8
19	Korean Re Group, South Korea	930.2	977.5	-4.8	27.8	21.4	66.2	76.4	73.5	34.0
20	ACE Tempest Re Group, Bermuda	902.4	699.1	29.1	31.6	33.2	70.2	49.1	48.3	156.4
21	Tokio Marine & Fire Insurance Group, Japan [2]	861.6	705.3	22.2	7.2	6.9	86.5	103.7	587.0	455.9
22	Hartford Re Group, United States	848.9	825.9	2.8	29.7	31.7	114.2	77.1	NA	NA
23	Caisse Centrale de Reassurance Group, France	775.1	754.2	2.8	9.1	12.5	67.8	75.6	143.5	178.6
24	QBE Re Group, Australia [2,3]	763.0	518.1	47.2	30.7	32.0	76.6	70.4	(57.3)	82.6
25	CNA Re Group, United States	685.0	951.0	-28.0	34.9	27.3	227.9	81.6	(1,102.0)	89.0
	Totals	**$93,576.5**	**$82,897.8**	**12.9 %**	**27.9 %**	**28.0 %**	**100.4 %**	**83.6%**	**$(8,682.0)**	**$1,930.2**

1 Expense ratios are estimated 2 All figures except net reinsurance premiums written include primary and reinsurance businesses 3 Net reinsurance premiums are estimated NA=not available
Source: Standard & Poor's Corp.

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Market: Hardening to continue

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"If you've got high exposure areas like D&O, you're seeing rate increases of 50% to 100%, in some cases—and, in some cases, more than that," he said.

One of the most-significant aspects of the current market is that pricing trends are holding firm, even though some of the new Bermuda companies have not yet made their business targets, many say.

"I think the Bermuda companies, more than any other market players, have really started to assert themselves on the world stage," said David A. Attisani, a partner and chairman of the insurance and reinsurance group at the Choate Hall & Stewart law firm in Boston. "Maybe the dark underbelly of this is whether there will be a lot of pressure to write volume," he said.

"Since Sept. 11, there has been an infusion of capital into the market in excess of $30 billion," said Mr. Attisani, whose firm represents ceding companies, reinsurers and intermediaries. That influx of capital "obviously brings a lot of pressure," he said. "A lot of it is corporate capital, which brings pressure to produce a return on investment fairly quickly, which has not been the insurance industry's strong suit."

But, thus far, there have been no signs of companies slashing prices to increase the volume of business.

"I think, most certainly, the capital was needed, and I think the capital was disciplined," said Mr. Bryce of IPCRe.

And Roderick P. Thaler, executive vp at Willis Re Inc. in New York, noted that much of the new Bermuda reinsurance capital has only recently been put to use. The new companies, he said, were still staffing up at the start of the year and weren't ready to deploy much of their capital for Jan. 1 renewals.

"The allocated capacity to the Bermuda market was up in April and July," compared with Jan. 1, Mr. Thaler said, "which bodes well for the Bermuda market."

"Their underwriting is excellent. You can see that in the questions they ask," he said. "They are going to be responsible; they are not undercutting markets."

July 1 renewals, primarily U.S. and Australian property reinsurance placements, saw price increases that were "in line with expectations" and consistent with Jan. 1 increases, according to Mr. Veghte of XL Re.

Percentage increases for U.S. property catastrophe reinsurance were in the teens, Mr. Veghte said. In addition, he noted that "the Japanese market all renews April 1, and there were some quite significant rate increases."

Caribbean windstorm coverage was one difficult area, according to Mr. Bolland, with coverage available but more expensive.

In the European market, one major development this summer was Cologne, Germany-based Gerling Global Reinsurance A.G.'s decision to pull out of the U.S. property/casualty market to concentrate on European business.

"Obviously, the centerpiece of any conversation about Germany this year has to be Gerling Global," Mr. Attisani said.

Calling Gerling's move "surprising," Gill & Roeser's Mr. Bolland said that "maybe it just shows that this was a good year in terms of underwriting results but prior sins can still jump up and bite you."

Recent flooding in Europe may have an impact on the reinsurance market there as well.

"It's going to be interesting to see how (the flood) loss pans out," Mr. Bolland said. "There have been some large numbers floated out, but it will be interesting to see how much is insured loss and how much is economic loss."

Another factor that will shape European reinsurers' performance is turbulence in the financial markets and a downturn in worldwide stock markets, said IPCRe's Mr. Bryce.

European companies tend to rely more on equities in their investment mix than do U.S. reinsurers, he said, and "the financial markets, obviously, are looking at influencing the capital adequacy of many companies in Europe. The capital adequacy could have an impact on influencing ratings."

As an example of some of the changes in conditions he sees as significant, Mr. Veghte cited the London marine market, where reinsurers now are writing pure marine coverage, rather than including nonmarine risks in marine policies.

"Equally, in the aviation side, most of the market moved from a risks-attaching basis to a loss-occurring," he said. "Those are changes that tend to last a long time."

On the casualty front, further asbestos losses, corporate governance issues and "just general news that seems to be leaking out all over the place this year leads me to believe that the market will stay hard for some time," he said.

Mr. Veghte said this year has brought "dramatic" price increases on XL Re's European casualty book of business in London.

The retrocessional market remains particularly difficult, with capacity tight and high prices.

"Capacity for retrocessional business has certainly shrunk. Pricing is very high," Mr. Veghte said. And, he said, "there is quite a large move to bifurcate the business between U.S. and non-U.S. coverage, so it's very hard for companies to buy worldwide retro."

The move to separate U.S. and non-U.S. retrocessional exposures stems from reinsurers' desire to reduce aggregations of risks, he said.

Mr. Veghte added that he thinks companies are looking more closely at industry loss warranties—index-linked contracts triggered by industrywide losses—as an alternative to retrocessional coverage.

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BUSINESS NEEDS CHAMPIONS

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Consensus builds for uniformity in E.U. oversight

By CAROLYN ALDRED

Negotiations will continue this fall over proposals to introduce a single, harmonized approach to regulating reinsurance companies in the European Union, similar to the E.U. rules that now govern insurance.

The participants—which include representatives from the reinsurance industry, European governments, insurance supervisors and the European Commission—aim to reach a final proposal by next year, according to an official in the European Union's Internal Market Department in Brussels.

Although differences of opinion remain over the approaches favored by regulators and reinsurers—with regulators generally preferring licensing by member states and reinsurers favoring a so-called "passport" approach—there is a consensus that a uniform system of reinsurance supervision is desirable and necessary, according to a statement from the European Commission.

There is "general support for a fast-track approach for reinsurance supervision, (and) we are now proceeding with detailed work and drafting of legal texts, as well as simulations," said an E.U. official working on the project who asked not to be identified.

Currently, the European Union has no common framework for reinsurance supervision. Work on the harmonization project began in 2000, following "recognition of the importance of reinsurance to the stability of the financial markets," the official said.

Events in recent years since have confirmed the need for uniform oversight, according to the E.C. statement.

In the statement, released earlier this year, the European Commission notes that "the reinsurance sector has seen important changes during the last few years. The concentration to a few large players has continued through mergers and acquisition, new financial products have been developed and new information technology tools have emerged."

"The tragic events of Sept. 11, 2001, will also have strong repercussions on the reinsurance industry, both as regards practices and available capacity. These developments make it even more important that a solid system of reinsurance supervision is in place to ensure that companies fulfill their obligations," the statement says.

The Comite Europeen des Assurances, the Paris-based federation of European national insurance associations, has stated that harmonized regulations for European reinsurers would increase their strength and recognition worldwide.

"This will be important for access to emerging markets but also may help to end the barriers to trade arising in developed markets, for example, from the subfederal layer of regulation in the USA," the CEA notes in a position paper on the issue.

Lynne Routledge, European officer for the International Underwriting Assn. in London, agreed.

It "would strengthen the European Commission's hand in any negotiations with the federal authorities in the U.S. with regard to achieving mutual recognition on the issue of the U.S. requirement that alien reinsurers deposit sums in trust funds there covering 100% of their liabilities or lodge letters of credit," Ms. Routledge said. "The U.S. authorities are generally inclined to the view that controls on foreign reinsurers are inadequate," she explained.

The United States is not alone in requiring European reinsurers to post capital against potential liabilities, Ms. Routledge said. "This is an expensive practice, and one which also ties up capital inefficiently. If every country followed it, there would be no international reinsurance, because the companies would

Harmonized regulations 'will be important for access to emerging markets but also may help to end the barriers to trade arising in developed markets.'

Comite Europeen des Assurances

not have enough capital to post in every foreign jurisdiction," she said.

"An effective regulatory regime within Europe will permit this matter to be better addressed internationally and bilaterally between the E.U. and countries outside the E.U. which allow or require such practices," Ms. Routledge predicted.

Industry organizations such as the CEA and IUA and individual reinsurers favor a passport approach, whereby a reinsurer that complied with the supervisory regulations established by the European Commission would be allowed to operate throughout the European Union without having to set up local branches or obtain a license in each country in which it operated.

Insurance supervisors, meanwhile, favor a licensing model, whereby a reinsurer would have to obtain a license from each state in which it operated, though the licensing requirements would be uniform.

The European Commission is confident that a compromise will be reached, because the key participants in the debate appreciate the

See E.U./page 22

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Technology helps in fighting fraud

By SALLY ROBERTS

Advances in technology are going a long way toward detecting the estimated $80 billion in fraudulent insurance claims that are submitted every year.

Today's front-end fraud detection technology not only can assess the fraud risk of individual claims—so called predictive modeling—but it also enables the Insurance Services Office Inc. to provide the industry with a huge database with which to cross-reference potential bogus claims. Identification of such claims can lead to further investigation by insurers or law enforcement.

But while the technology is there, its success relies on individual insurers and their representatives. Although companies are spending more money and resources on fraud detection, including technology, they have yet to make full use of the technology available today, observers say.

"I don't see any company that has nailed the front-end fraud detection piece yet," said Patrick Ramsden, vp-insurance solutions for Magnify Inc., a Chicago-based fraud technology vendor. "As people begin to utilize predictive modeling more, it will help to improve the accuracy of fraud detection."

"The industry is still trying to determine how the technology fits in with their business models and work flow processes," said Dan Abbott, vp-information support group for the National Insurance Crime Bureau in Palos Hills, Ill.

Nevertheless, insurers of all sizes consider fraud "a serious problem," and more than one-third believe that the amount of fraud has increased over the past three years, according to a survey conducted by the Insurance Research Council and ISO that was released earlier this year.

Experts point out that, although it is widely believed that fraud is on the rise, better detection systems might simply be uncovering more abuse.

"I'm seeing more cases of fraudulent claims, but I don't know if it's an indication of an overall increase or whether it's just being discovered more because of advances in technology," said Randall H. Wilson, a partner and national director of fidelity services at RGL Forensic Accountants & Consultants in St. Louis.

Technology advances every year give "insurers a bigger and more powerful database to capture more information to be able to correlate, sort through and track trends, which allows them to see what the trends are and when things don't look right," Mr. Wilson said.

Much of today's technological development is replacing the old "rules-based" system of fraud detection used within the insurance industry, experts say. Under this approach, certain patterns of fraud or schemes were identified, and if a claim followed one of the patterns, a red flag was raised. For example, if a workers compensation claim was filed on a Monday, a red flag might be raised to indicate the possibility that the injury occurred at home over the weekend rather than at work.

The problem, experts say, is that the rules-based system is insufficient in today's more-sophisticated world of insurance fraud.

The rules-based approach looks for only a certain number of the schemes that can be perpetrated, said Steve Biafore, vp-predictive health care group at technology vendor Fair, Isaac & Co. Inc. in San Diego. "There's always another way, and the people using those other ways are not being found," he said. "Until you know what those ways are—and they aren't always self-revealing—you can't stop the problem. You need some of these breakthrough technologies."

"A bad guy, in order to perpetrate fraud, has to make up a story—a story that is going to back up a claim to be paid," Mr. Biafore continued. "That story, if it's built well and hidden well, can fly through a payment system and generate a payment that the bad guy is looking to get. That story can never be created with all the data available to the good guys today," he said.

"The good guys know everything that everyone is doing. They look at all the injury claims, they look at all the bills submitted by providers, they look at all of the indemnity payments; they have a very complete picture of what's going on," Mr. Biafore said. "The problem is, most insurers don't use that complete picture to their full advantage."

"It's very difficult to access all the available data, because there's a lot of it and it can be very complicated," Mr. Biafore said. "And we need to make a decision about who's risky and who's not for fraud."

This is where predictive modeling technology can help.

Magnify, for example, began focusing on predictive modeling technology a few years ago, Mr. Ramsden said. It's really a mathematical equation, he said, with a historical sample of data run against various fraud data to find patterns. A claim is then ranked on a scale of zero to 1,000, indicating the level of fraud potential, he said.

Mr. Biafore likens predictive modeling technology to a funnel, with data put in at the large end and an accurate assessment of the fraud risk coming out at the smaller end.

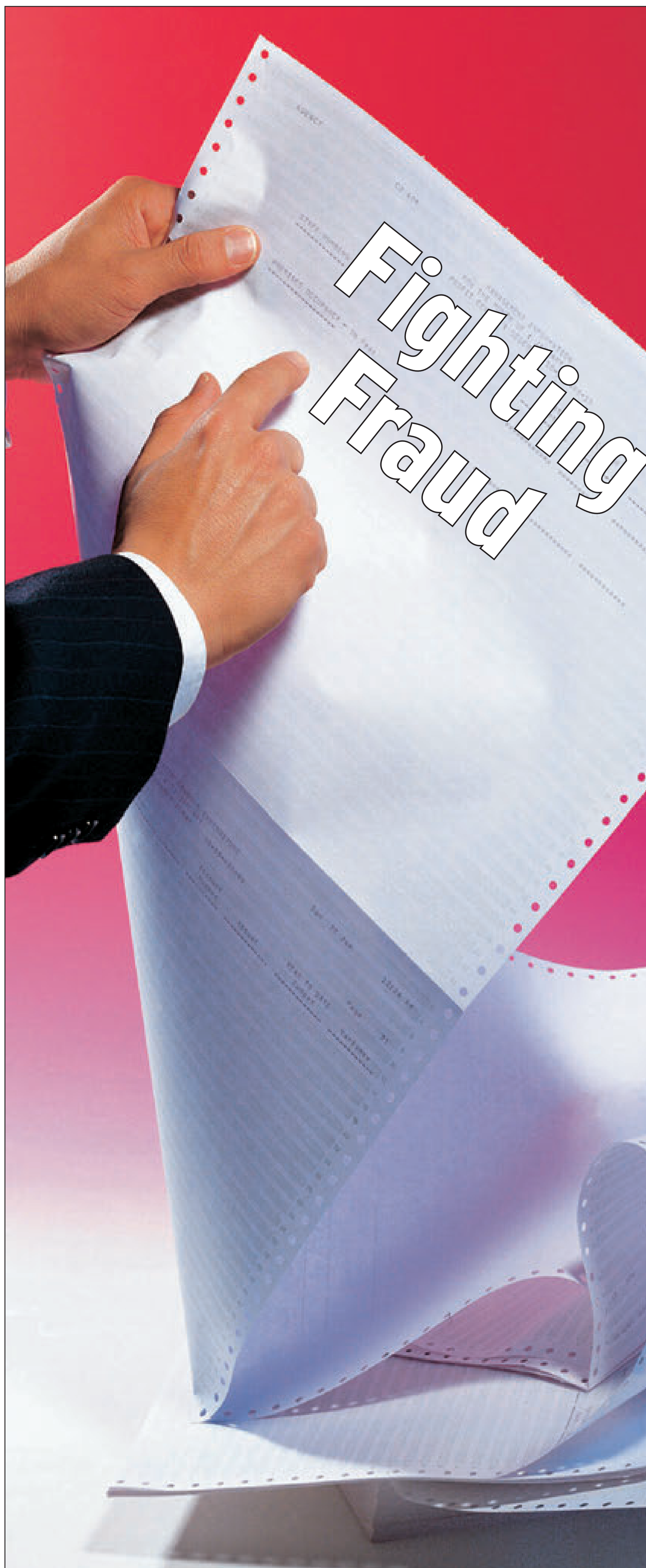
In general, predictive modeling software can be used through an application service provider on a company's system, or vendors can take the data from individual companies and run it through their own systems.

Once a fraud assessment is made, high-scoring claims can be set aside for further investigation. These claims also can be run through ISO's ClaimSearch comprehensive database.

ISO's ClaimSearch system was developed three years ago from the merging of industry's leading claims databases for property, casualty and auto insurance, explained Richard Boehning, senior vp of ISO in Jersey City, N.J.

Insurers and others submit claims through

See DATA/next page



Top 10 Florida frauds / 20B

Program trains fraud investigators / 20D

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Data: Aiding the fight

Continued from previous page

their own claims systems or through the ISO ClaimSearch system's personal computer software. The system automatically enters the claims into the database and searches for other claims filed by the same individuals or businesses. The system searches for matches in identifying information fields, such as name, address, Social Security number, vehicle identification number, driver's license number and tax identification number. The system returns reports on any matches to the submitting insurers.

"The more information we get from companies, the better the search and data that we give back," Mr. Boehning said.

"We've seen a dramatic increase in the number of claims being sent to us," he said. Three and one-half years ago, ISO ClaimSearch had received about 90 million claims; today the database has 290 million claims.

The database will have 400 million to 450 million claims within two years, making it "very powerful," Mr. Boehning predicted. "I know it's going to have a dramatic effect."

Florida publicizes top fraud cases

By RODD ZOLKOS

Auto insurance scams, evasion of workers compensation premiums and an illegal billing scheme were among the fraudulent activities that made the Florida Department of Insurance's 2001-2002 Top 10 Fraud List.

The department uses the annual list to draw consumers' attention to the issue of insurance fraud and to demonstrate that Florida officials are serious about fighting it.

"It's a lighthearted way to bring attention to the serious issue of fraud and its costs on society," said a spokeswoman for the Florida department.

"Clearly, it's a play off the top 10 list that David Letterman has made famous," the spokeswoman said. "It's an attempt, in an interesting way, to convey to consumers the variety of schemes that are attempted against them every year, hoping that a little bit of humor—but also the facts—will prompt people to read it."

According to the spokeswoman, the Department of Insurance has been releasing the annual list for about 10 years. The list gets good attention in the state's news media, she said.

The result, Insurance Commissioner Tom Gallagher and other Florida officials hope, is that those reading about the scams will become more aware of fraud and more inclined to report their suspicions.

The top 10 list is part of an aggressive anti-fraud effort in Florida, which also includes rewards of up to $25,000 for information leading to convictions in complex fraud schemes.

The size of the reward is based on how crucial the information is to the case and how much money is recovered or saved by pursuing the case.

"We haven't been able to give away that jackpot yet, but we have given away several $5,000 rewards," the spokeswoman said.

This year's top 10 list includes:

- The head of a Pennsylvania organization that is alleged to have sold phony health insurance to thousands of Floridians is facing two felony counts of communications fraud based on transactions in Palm Beach, Broward and Dade counties. The state shut down the organization last year for operating without an insurance license, and the defunct company is now in receivership in Florida.
- Two Miami title insurance agents were arrested on charges of conspiracy to commit racketeering and grand theft related to the alleged diversion of nearly $6 million in escrow funds. The two, both licensed title agents, face revocation of their licenses. Because some escrow funds received by the title agency from mortgage lenders were never disbursed on behalf of the borrowers, warranty deeds prepared by the title agency and publicly recorded contained the allegedly false claim that the properties were free of all encumbrances.
- A South Florida insurance agent was charged with organized fraud for allegedly stealing retirement funds that clients intended to invest in annuities. Investigators said that the agent, instead of purchasing legitimate annuities from life insurance companies, put more than $100,000 of the investors' funds into a defunct Vero Beach company.
- An owner of a Miami-Dade auto insurance agency and several of his agents were charged with racketeering and conspiracy to commit racketeering for allegedly "sliding" undisclosed coverages and hidden costs to thousands of customers. Sliding occurs when an agent sells an applicant a coverage or product without the applicant's knowledge or consent. Investigators said agency employees were instructed to charge as many hidden costs as they could get away with, ranging from $40 to $200, with commissions of up to 90% paid on

See TOP 10/page 20D

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Top 10: Florida publicizing fraud cases

Continued from page 20B

the hidden charges.

● A Hialeah man was sentenced to 13 years in prison for his part in a scheme that fraudulently billed more than 40 insurance companies for more than $400,000, using a network of shell corporations and rented drop boxes located throughout Dade and Broward counties. The man was found guilty of 39 counts of grand theft, 39 counts of insurance fraud, one count of organized scheme to defraud and one count of violation of probation. Investigators said the shell corporations were used to rent drop boxes for the collection of insurance checks sent to pay bogus medical claims.

● Seven doctors, three clinic owners and six clinic workers were arrested earlier this year in a sweep of arrests stemming from investigations of complaints from dozens of auto accident victims that their insurance companies were billed nearly $1 million for clinic visits they did not make. The ongoing investigation has since led to the arrests of five more doctors and other clinic workers.

● The owner of a Palm Beach County roofing company was charged with fraud for allegedly classifying roofers as supply dealers on his payroll to avoid more than $1 million in workers compensation premiums. The company's owner is accused of misclassifying his employees' duties with three different insurance companies from 1997 until this year.

● An Aventura insurance agent voluntarily surrendered his state license based on allegations that he was involved in a scheme that misled elderly customers living in central and south Florida into buying life insurance when they thought they were buying or renewing health insurance policies. The agent agreed to permanently withdraw from Florida's insurance industry. Investigators suspect the scheme also involved former agents, whose licenses were previously revoked by the department, who allegedly paid to use the credentials of licensed agents.

● An Orlando man known to law enforcement as “The Torch” was arrested in a sting operation after allegedly agreeing to burn a sport-utility vehicle so the owner could collect the insurance settlement. An accomplice also was arrested. “The Torch” came under suspicion in January, after the owner of a car—reported stolen in Orlando and found partially burned in Volusia County—confessed that he had paid to dispose of the vehicle for insurance recovery purposes. Investigators then recorded “The Torch” agreeing by telephone to meet with an undercover officer posing as a vehicle owner seeking to have the vehicle destroyed for insurance purposes.

● A Pinellas Park man was charged with fraud and grand theft for allegedly cashing his wife's disability checks for six months after her death in June 2001. The man's wife began receiving disability checks in 1992, after she was injured while working for a fast-food chain in New York. The couple moved to Pinellas Park later that same year; biweekly checks were sent to the couple's post office box there through the end of 2001 and continued to be cashed. In December 2001, Social Security notified the disability insurance company that the woman had died in June. A week later, the man called to ask why he hadn't received a check.

Greater NY Insurance Co
2 column x 8”

NICTA training meeting the need for Internet anti-fraud courses

By MICHAEL BRADFORD

It's getting much harder for the bad guys to get away with fraud, thanks partly to a program that trains those who look for the criminals and others who work to prosecute them.

The National Insurance Crime Training Academy is an Internet-based service operated by the National Insurance Crime Bureau and developed with the help of the National Assn. of Independent Insurers and other insurance industry partners.

The academy, which offered its first course in 2001, recently unveiled its second generation of 14 updated and new courses, aimed at teaching insurance company personnel, prosecutors, law enforcement officers and others how to combat fraud. Thousands of participants have taken NICTA courses.

Such training was needed because of the dramatic increase in interest in fraud prevention over the last 10 years, said John Eager, senior director of claims services with the NAII in Chicago. “Just from the number of people at the state level” who participate in fraud detection, “the need for fraud training has grown dramatically,” Mr. Eager said.

In 2000, an NAII task force looked at the fraud problem, after last issuing a report on fraud in 1992. The group found significant growth in efforts to battle the white-collar crime. In eight years, anti-fraud bureaus across the U.S. had grown from approximately 10 to 15 operated by insurance departments and attorneys general to around 40. Spending to fight fraud had risen from around $200 million to $650 million, according to NAII estimates.

“We had an immense, driving need for more training,” Mr. Eager said. There were a number of anti-fraud conferences being held throughout the country, but “they weren't very well coordinated,” he said.

The NCIB, the NAII and its member companies discussed the idea of a training program with the Federal Bureau of Investigation in February 2000. The challenge was to develop a regimen that would provide resources for public and private entities and do it in a virtual format, Mr. Eager said.

Soon after the meeting, with input from the FBI, NICTA was online.

Among its offerings are a new course on vehicle fraud and another that helps prosecutors prepare fraud cases. Other courses cover workers compensation fraud, investigations, vehicle theft and other topics.

NICTA provides a way for an insurer to offer the courses to its claims adjusters without having to pay individual fees for each of the thousands of adjusters who sign up. A site license can be purchased that allows all of a company's adjusters to use the system for a single fee. Mr. Eager said some of the country's largest insurers have purchased licenses.

“If you have 8,000 to 10,000 adjusters, they all can get training through NICTA and not have to pay over and over,” Mr. Eager said. Given the number of insurance company employees who are potential candidates for the courses, it is reasonable to assume that thousands have already taken them, he said. It's not known how many public-sector fraud fighters have taken NICTA courses.

Unlike other training programs, the NICTA program does not provide its own certification to successful trainees. Instead, Mr. Eager explained, the courses are structured to be helpful to candidates for certifications such as the Chartered Property Casualty Underwriter designation.

Information on NICTA is available on the academy's Web site, at *www.nicta.org*. The NAII can provide information, too. The NAII telephone number is 847-297-7800.

Agent/Broker Topics

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E.U.: Regulations not uniform

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benefits of a harmonized regime, the E.U. said.

According to the CEA position paper, uniform supervision, particularly through an E.U. passport system, would benefit the reinsurance industry by providing a level playing field for all E.U. reinsurers.

The current "patchwork of national reinsurance legislation hinders the development of a single reinsurance market," the CEA states. It notes that there now exists great variation in the financial strength of reinsurers and that improved regulatory supervision could help guarantee a minimum level of financial strength and management quality.

Harmonized supervision would not only benefit ceding companies and their policyholders but improve market stability, the CEA says in its position paper.

Currently, the regulatory oversight of reinsurers varies widely throughout Europe. In Belgium, Greece and Ireland, "domestic reinsurers are not subject to any direct reinsurance supervision" separate from general insurance regulations, according to the CEA.

A comprehensive system of licensing and supervision for reinsurers exists in Denmark, Finland, Portugal and the United Kingdom, while a more limited system of reinsurance supervision operates in Austria, Italy, Spain and Sweden, though Sweden also has separate licensing requirements for domestic pure reinsurers, the CEA reports.

In France, Germany and the Netherlands, there is "an intermediate solution to the question of supervision, combining some elements of direct supervision with indirect supervision," whereby regulators examine the reinsurance programs of domestic insurers.

Among the matters to be discussed by negotiators during the coming months will be:

- The scope of the regulatory regime. This will determine to what extent it would cover reinsurance written by insurers and reinsurance captives, as well as pure reinsurers.
- The treatment of loss reserves. There currently is no consensus on the amount of loss reserves, or "technical provisions," deemed "adequate," and national differences are significant, according to the E.C. paper.

One option for a fast-track approach is to adopt the reserving requirements found in existing E.C. insurance directives until more guidance is available from other organizations working on this issue.

The actuarial profession in Europe and the International Accounting Standards Board currently are looking at this matter, as are E.C. officials in charge of insurance solvency oversight.

- The treatment of equalization reserves. Equalization reserves, also called catastrophe reserves, are tax-advantaged funds used by many European reinsurers and insurers to minimize the volatility of claims.

The European Commission has suggested that equalization reserves should not be mandatory for reinsurers, except perhaps for credit reinsurance, though member states could be allowed to require such provisions.

The European Commission also notes that international accounting standards being prepared by the IASB are not likely to allow such reserves to be included as liabilities on balance sheets, a change that would raise tax payments

- The establishment of solvency margins. The same guidelines used for direct insurance likely will be adopted for reinsurance, though the European Commission contends that the greater volatility in reinsurance means that solvency margin requirements must be "significantly" higher than the current level for direct nonlife insurance, perhaps as much as double.
- The development of investment rules. Such rules could be either quantitative or qualitative in approach. A quantitative rule, for example, might specify the percent of assets that could be invested in equities, while a qualitative rule might provide details as to how reinsurers would have to maintain balanced investment portfolios.
- The resolution of reinsurance and retrocession matters. Ceding companies using E.C.-supervised reinsurers might be able to increase the reduction factor for ceded reinsurance, from the current 50% to perhaps 75%, in the new solvency and reinsurance regime, the E.C. suggests. The reduction factor is the amount of credit a cedent can claim.

Major reinsurance companies such as Munich Reinsurance Co. and Swiss Reinsurance Co. are working closely with the European Union on the proposals.

Munich Re, one of Europe's largest reinsurers, would not comment on the details but a spokeswoman confirmed that the company was involved in the process and generally supported the concept of uniform regulations.

Rolf Nebel, legal counsel for Swiss Re, warned, though, in a paper published earlier this year, that "the reinsurance industry must take care that current attempts to introduce a new regulatory framework for reinsurance are not driven by a mere momentum of their own."

Mr. Nebel said the E.U. Commission's plans to extend the scope of the direct insurance directives to encompass reinsurance are "problematic," because reinsurance is different from primary insurance and requires a "more flexible and less extensive" regulatory treatment.

Instead, Mr. Nebel advocates indirect regulation of reinsurance, whereby the supervisory authority regulates the quality of the reinsurance purchased by the supervised primary insurers.

PXRE Reinsurance
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London reinsurers mindful of Bermuda capital

By SARAH VEYSEY

Although business remained brisk at July 1 renewals, London reinsurance underwriters want to ensure that they don't lose out to the rapidly expanding Bermuda market during the year-end renewal season.

The London reinsurance market in 2001 accounted for about 15% of the total global reinsurance premiums written, according to research from Swiss Reinsurance Co. And underwriters were kept busy at July renewals, with one source at Lloyd's of London describing Lloyd's underwriting floor as "bonkers" during the weeks leading up to July 1.

But reinsurers from both the Lloyd's and the London company markets are mindful of the substantial amount of capital that flowed into the Bermuda reinsurance market in the wake of the Sept. 11 terrorist attacks, as both established and new companies sought to take advantage of the higher reinsurance prices (see related story).

And in London there is a feeling of uncertainty as both reinsurance underwriters and cedents reassess their position and make plans for the coming year.

"The level of uncertainty this time around is possibly greater that at the end of last year," according to Andrew Elliott underwriter of Liberty Syndicate Management's syndicate 282.

Cedents are reconsidering how much reinsurance protection they need and underwriters are reluctant to offer terms and conditions until they see how the rest of the market is going to act, he said.

"Reinsurance spending will change its nature—people may want to retain more on their own books," he added.

Last year, in the wake of the Sept. 11 terrorist attacks, the London reinsurance market underwent a knee-jerk reaction, raising rates, tightening terms and cutting capacity across most lines, said John Eltham, director of special risks at Miller Insurance Group Ltd., which has both Lloyd's and company market units. But now, he said, as market participants assess the amount of available capacity and as talk of increased retentions and alternatives to traditional reinsurance—as well as the Bermuda capital influx—abounds, reinsurers in London are looking at ways to keep premiums flowing into the market.

"From an underwriting point of view, we are looking at a good, hard phase, and it could well last. I think (underwriters) are hoping that it'll last another year or two," said Callum Stewart, managing director-nonmarine reinsurance at brokerage Heath Lambert Group P.L.C. in London. "But I think the market is going to have to look to its laurels at Jan. 1, because Bermuda will have now got its act together for Jan 1. There is no room for any complacency on the part of anybody at all," he said. "The U.S. brokers and international brokers who are placing business into Bermuda may move business from London if London doesn't come up to scratch at the first of January" by offering competitive rates and terms, Mr. Stewart said.

Rate increases, which began in earnest early last year and then accelerated after Sept. 11, are now leveling off in most lines in London, experts say.

"In terms of further rate increases, we do expect some, but not as dramatic as last year. The reason for that is retentions have increased—premiums went up, but there is a threshold at which people just can't pay any more. And, in some cases, people are getting close to that threshold," Mr. Eltham said.

The London reinsurance market is relatively stable, according to Mr. Stewart. "There is no big swing in any particular direction," he said. "Rates are maintaining level in property areas. You are not getting the increases you would have had at Jan. 1 after Sept. 11, or the upward swing that was creeping up before Sept. 11 due to the deterioration in loss ratios," Mr. Stewart said. In addition, "there had already been a good increase on the (retrocessional) side of things even before Sept. 11."

> **'In terms of further rate increases, we do expect some, but not as dramatic as last year.'**
>
> *John Eltham*
> *Miller Insurance Group Ltd.*

The current hard market differs substantially from that in 1993, according to Stephen Searby, a director of Standard & Poor's Corp. in London. "What happened there was that there was a series of substantial losses, there was the (London market excess-of-loss reinsurance spiral), and new capacity was subsequently created in response to the price increases," he said.

"What has been quite interesting (in the current hard market) is that we have had (the World Trade Center loss)—albeit rates were already increasing before WTC—but a lot of the new capacity was already in place even before any of the WTC claims had been paid," Mr. Searby said. "The capital markets have responded far faster this time around, the capital has been shown to be far more fluid this time around, and that is possibly one argument to suggest that any (price) increases are going to be more muted and sub-

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PHOTO: NEWS CAST

One Lloyd's of London source described the underwriting floor as 'bonkers' during the July reinsurance renewals.

London: An eye on Bermuda

Continued from page 24

dued in the short term," he said. "On the other hand, the cost of raising huge capital has increased significantly," because of declining equity markets, he noted. "And I see that as one of the main arbiters of where insurance and reinsurance premiums go," Mr. Searby said.

On property lines, rates generally are remaining firm and any changes are likely to involve toughening of terms rather than dramatic rate increases, Mr. Stewart explained. "There may still be increasing rates in extreme areas where there may still be a shortage" of capacity, he said, such as windstorm and earthquake risk in the Caribbean. In that area, "rates are probably still increasing, because you have still got quite a lack of market there, because there is a small income…compared with a big potential loss," he said.

But for U.S. property business, further rate increases tend to be modest, Mr. Stewart said, and ample capacity is available in London for U.S. catastrophe business, he added.

Reinsurance for directors and officers coverage, particularly D&O and errors and omissions coverage for U.S. risks, is becoming increasingly difficult to place in London, according to Stephen Hitchcock, deputy managing director-nonmarine treaty reinsurance at Heath Lambert.

In the retrocessional market, rates have gone up significantly, though prices are likely to level off, according to Mr. Stewart. "The rates on retro (business) had already gone up considerably at the end of last year. There was a lot more retro capacity two or three years ago, when Australia was still writing it, but now you are talking pretty high rates-on-line—20% to 25% on the first layer.

"It has been like that for a year, and that is not going to increase a lot, because it can't. People will just not buy (retrocessional cover) if it goes up any more than that," he said.

The tight retrocessional market "works two ways" for London reinsurers, Mr. Searby said, "because London is a writer of some retrocession business and is, at the same time, a user of retrocession as well," he said. "But there are very few people writing retrocessional business," he added. In the wake of the London market excess spiral of the 1980s, writing retrocessional business came to be regarded as a "bad thing to do," Mr. Searby said.

> **'I think, if you look at some of the foreign capital that is in London, that they see their London company operation and their Lloyd's (operation) as being almost the same one.'**
>
> *Stephen Searby*
> *Standard & Poor's Corp.*

"I would think reinsurers are going to have to use more retrocession going forward, as, like the direct insurers, some of them are short of capital," he added.

Since Sept. 11, several companies have set up reinsurance operations outside of their traditional Lloyd's base. For example, Wellington Underwriting P.L.C. established Wellington Re in the London company market, while Goshawk Insurance Holdings P.L.C. late last year launched Goshawk Reinsurance Ltd. in Bermuda.

"We will see further to-ings and fro-ings between Lloyd's and the London companies market," Mr. Searby predicted. "I think, if you look at the some of the foreign capital that is in London, that they see their London company operation and their Lloyd's (operation) as being almost the same one. Therefore, for them, it is the commitment to London that counts, as opposed to a commitment to the London company market or to Lloyd's," he added.

"So long as London remains a good place to do business, then, ultimately, both the London company market and Lloyd's will benefit."

Dickstein Shapiro & Morin
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Capacity abundant but costly for non-U.S. cat exposures

Main risks are European and Caribbean windstorm, Japanese quake

By MICHAEL BRADFORD

Reinsurers facing claims from the recent flooding in Europe are all too aware that there are plenty of non-U.S. catastrophe exposures in the world.

Flooding and windstorms that have caused billions of dollars of damage have become a recurring problem in recent years in Europe. Although other non-U.S. property catastrophe risks may not produce claims as frequently, they nonetheless create some challenges for reinsurers.

That doesn't mean, however, that reinsurers are avoiding such catastrophe exposures altogether. Indeed, capacity remains abundant for most non-U.S. property catastrophe risks, albeit at a high price in some cases.

"Nobody is saying you can't buy capacity; there is tremendous capacity out there," said Steven Bolland, senior vp at reinsurance broker Gill & Roeser Inc. in New York. And, though pricing for some risks has become expensive, it hasn't yet reached "ridiculous levels," he noted.

'Nobody is saying you can't buy capacity (for catastrophe exposures); there is tremendous capacity out there.'

Steven Bolland
Gill & Roeser Inc.

"There is still a substantial amount of capacity now that pricing is approaching adequacy in a lot of areas," said Christopher McKeown, president and chief executive officer of ACE Tempest Reinsurance Ltd. in Bermuda. With new reinsurers in Bermuda joining a cast of older property catastrophe reinsurers, "capacity is not an issue," he pointed out. "Once the pricing mark is met, a lot of people put out their maximum capacity."

Property reinsurers can count the non-U.S. catastrophe "hot spots" on one hand: Japan and its significant earthquake exposure, the Caribbean's windstorm risk, and damaging winds and flooding in Europe are among the first mentioned.

Such areas are characterized by "a lot of values and a lot of exposures," said Mr. Bolland. Many places outside the United States have a high potential for earthquakes, for example, but are sparsely populated, he explained. Flooding, typhoons and quakes often strike parts of the world where devastation may be high but property values low, he added.

In Southeast Asia, for example, the biggest risk in many areas is from typhoons, but "insured values are modest," said James Bryce, president and chief executive officer of IPCRe Ltd. in Pembroke, Bermuda.

Reinsurers point out that the typhoon exposure in Taiwan is become a growing concern as that nation continues to develop its computer semiconductor industry, which involves high property values.

In terms of earthquake exposures, Japan poses a big worry. Swiss Reinsurance Co. estimates that a "maximum loss event" would result in $50 billion in insured losses. The country also is exposed to typhoons, and the potential insured loss from a major storm hitting Japan could reach $15 billion, according to Swiss Re estimates.

One underwriter said reinsurers are becoming increasingly interest-

See CATS/next page

PHOTO: AFP

Japan's principal cat exposure is to earthquakes, such as the 1995 Kobe quake that caused more than $100 billion in economic damages.

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PHOTO: REUTERS

August floods in Europe caused an estimated economic loss of $5.91 billion and untold insured losses.

Cats: Capacity available, costly

Continued from previous page

ed in providing earthquake coverage to Israel, an area where quakes could cause severe damage but are not expected to occur frequently.

Although earth movement is a major cause for concern in many parts of the world, wind and water are the natural perils that most worry reinsurers in parts of Europe and the Caribbean.

The August floods that caused an undetermined amount of insured losses and economic losses of more than 6 billion euros ($5.91 billion) through parts of Eastern and Western Europe have soaked up some reinsurance capacity, but an ample amount remains, according to industry sources.

"When it comes to flooding, insurance penetration is still relatively low," explained Gerry Lemcke, deputy head of catastrophe perils at Swiss Re in Armonk, N.Y. The insured loss, he noted, will be significantly lower than the economic damages from the recent flooding in Europe.

Mr. Bryce pointed out that IPCRe follows the forms of its insurer clients when writing flood coverage in Europe. Coverage generally is offered for flooding losses in the United Kingdom, he said, though it is less likely that flood-related losses are covered in continental Europe.

Mr. Bryce noted that another area with a major risk of flooding comes as a surprise to some—the Middle East. "They say, 'Wait a minute, it's a big desert.' But when it rains, watch out," he said. "It really comes down." Heavy rain and flooding "can produce a catastrophic loss" on construction all-risk exposures in that part of the world, he said.

As the market has hardened, prices for property reinsurance have moved up in some areas.

In particular, reinsurers wary of Caribbean storms have raised rates there. Because a number of storms have raked the Caribbean in recent years, "prices have doubled in the last three years" for reinsurance coverage there, said Gill & Roeser's Mr. Bolland.

Other prices have risen as well, said Nicola Stacey, senior underwriter for GE Employers Reinsurance Corp. in London. "The market generally has seen an upturn in price everywhere in the world." Capacity is available, she emphasized, but the amount "varies depending on the territory" and is "subject to pricing."

"We strictly control our exposures," Ms. Stacey pointed out, offering coverage where Employers Re

'The market generally has seen an upturn in price everywhere in the world.' Capacity is available, but the amount 'varies depending on the territory.'

Nicola Stacey
GE Employers Reinsurance Corp.

believes the price is right for the risk. Clients provide loss numbers and loss simulations that are used to model potential losses, she said, "and we price accordingly."

Mr. McKeown said ACE Tempest Re limits its non-U.S. exposure for the most part to Europe, Japan, Canada, Australia, New Zealand and the Caribbean. "There are large areas where we don't write," he said, but may consider reinsuring property exposures if loss and exposure information becomes available. Those areas include parts of Asia, South America and Eastern Europe.

Currently, pricing in those areas simply does not justify the risk, Mr. McKeown noted.

Mr. Bryce pointed out that reinsurance buyers are picky these days about where they get their coverage. "The one thing that is common around the world is that people are looking carefully at solvency, liquidity, track records and returns," he emphasized.

Because alternatives to "traditional" reinsurance are limited, buyers want financially stable underwriters on their risks, said Mr. Bryce of IPCRe. "Cheap and cheerful don't work when you have a loss."

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Petrobras wins platform bond case

Award of at least $273.5 million may tighten surety market still further

By MICHAEL BRADFORD

NEW YORK—A huge award against issuers of surety bonds for two Brazilian oil platforms could mean additional tightening in an already-constricted marketplace.

A unit of Rio de Janeiro, Brazil-based oil company Petroleo Brasileiro S.A. and two Japanese banks were awarded at least $273.5 million in late July by U.S. District Court Judge John G. Koeltl in New York. He ruled that United States Fidelity & Guaranty Co. and American Home Assurance Co. must pay the award after failing to meet their obligations on bonds written to guarantee the construction of two oil platforms in the 1990s.

Prejudgment interest could push the award to more than $320 million, according to an attorney in the case.

The award had yet to be finalized as of late last week, and attorneys for the insurers could not be reached to determine whether an appeal is in the works. Apart from a statement issued shortly after the ruling as to its effects on the earnings of The St. Paul Cos. Inc., which acquired USF&G in 1998, the insurers refused to comment. American Home is a unit of American International Group Inc.

St. Paul said in its statement that the impact to net third-quarter earnings "should not exceed $25 million, net of reinsurance, case reserves and taxes, and prior to any recoveries." St. Paul said in its statement that "recoveries may be significant" but offered no estimate.

The legal action focused on platforms P-19 and P-31, which were designed to produce 200,000 barrels of oil and 4.9 million cubic meters of natural gas per day off the coast of Brazil. Petrobras unit Braspetro Oil Services Co. hired two contractor consortia that were low bidders on the projects. USF&G and American Home wrote performance bonds in 1995 to guarantee that the work was completed. Bank of Tokyo-Mitsubishi Ltd. and the Long-Term Credit Bank of Japan Ltd. provided funding for the P-19 project and were listed as obligees on that bond.

See PETROBRAS/next page

PHOTO: COURTESY OF PETROBRAS

United States Fidelity & Guaranty Co. and American Home Assurance Co. wrote performance bonds in 1995 to guarantee the completion of two Petrobras oil platforms.

Compulsory employer contributions sought

TUC calls for U.K. pension reform

By SARAH VEYSEY

LONDON—The United Kingdom's Trades Union Congress is calling on the government to mandate employer contributions to occupational pension plans.

In a new report, the London-based labor federation maintains that requiring employers to contribute to occupational plans would boost employee participation, particularly in so-called stakeholder plans, helping ensure that workers have adequate savings at retirement.

TUC

Each U.K. employer with more than five employees is required to offer access to a low-cost stakeholder plan, or a comparable or better alternative, to all its workers. Administrative charges for stakeholder plans must total less than 1% of the value of the pension fund.

But recent research by the TUC shows that while 76% of professional men are members of occupational pension plans, just 34% of unskilled male workers participate in such plans. In addition, 71% of professional women in the United Kingdom are members of occupational pension plans, but the proportion among unskilled women is just 27%, the TUC said.

"We want to see compulsory employer contributions and action to stem the tide of final-salary scheme closures," said Brendan Barber, TUC deputy general secretary. He was referring to the closure in recent months of many U.K. defined benefit pension plans to new participants.

It is unlikely that the current U.K. government would make employer contributions mandatory, according to Matthew Demwell, a consultant at Mercer Consulting Group in London. There are several reasons that such a move would be viewed as unpopular, he explained.

The government is concerned that making contributions compulsory would be seen as a tax that could harm the competitiveness of U.K. business, Mr. Demwell said.

In addition, he said, employers likely would offset compulsory contributions by reducing pay increases for employees, which would be unpopular among employees.

Earlier this year, a government-sponsored review of the U.K. pension industry recommended that employers contribute at least 4% of an employee's salary into his or her pension plan. The U.K. government is considering the report's recommendations.

The TUC's report, "Uncovered: Workers without Pensions," can be viewed online at www.tuc.org.uk.

Aussie buyers slam plan for mandatory terrorism coverage

By SIMONE ZENONI

CANBERRA, Australia—A plan to make terrorism risk insurance compulsory is drawing protests from Australian risk managers.

Bruce Ferguson, president of the Sydney, Australia-based Assn. of Risk & Insurance Managers of Australasia, said the proposed Australian Terrorism Risk Insurance Scheme is unfair and would require corporate policyholders to pay additional premiums to fund the program.

> **'It is totally unreasonable that there has been insufficient time for consultation with insurance buyers.'**
>
> *Bruce Ferguson*
> *Assn. of Risk & Insurance Managers of Australasia*

Mr. Ferguson, who is risk and insurance manager for Sydney Water Corp., said ATRIS, under government proposals issued this month, would require additional premiums to build up a pool of $300 million Australian ($165.5 million) over three years.

"While ARIMA appreciates that the government has done something to overcome the lack of cover offered by insurers, it is unfair that it is compulsory, its application is draconian and it is totally unreasonable that there has been insufficient time for consultation with insurance buyers," Mr. Ferguson said in a statement.

According to the proposals put forth by the government's consultant—Sydney-based Trowbridge Consulting, a unit of Deloitte Touche Tohmatsu—there would be four layers to the plan.

The first layer would carry the same deductible as would other risks on the applicable policies. For the second layer, a pool of $300 million Australian would be funded over three years through a levy on the premiums of property, business interruption and public liability policies.

The third layer would consist of a commercial loan facility for $1 billion Australian ($551.7 million), and the fourth layer would consist of government indemnity, through reinsurance, for up to $9 billion Australian ($4.97 billion).

According to the Trowbridge report on the proposal, insurers would charge policyholders to collect funds for the terrorism risk pool. If a covered terrorist event were to occur and claims were to be filed, insurers would increase rates to repay the loan and reinsurance facilities and to rebuild the pool.

The plan would cover fires, explosions, airplane crashes and floods caused by terrorist events. It would not cover nuclear, chemical or biological activities. Initially, the plan would provide coverage for property damage, business interruption and public liability; the federal government is considering whether to cover workers compensation

See ATRIS/page 31

World Updates

Royal & SunAlliance fined over pension sales

U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C. was dealt a blow last week when it was fined £1.35 million ($2.1 million) by the U.K. Financial Services Authority for its handling of victims of improper pension sales. The FSA determined that RSA had failed to pay about £32 million ($48.7 million) to compensate around 13,500 customers who bought personal pension products in the 1980s and early 1990s that were likely to provide them with lower retirement income than employment-based pensions that were replaced. Also last week, an RSA unit was fined $125,000 by a U.S. regulator over the improper nonrenewal of a policy (see story, page 2). Meanwhile, A.M. Best Co. last week downgraded RSA to A- from A. The downgrade, in part, reflects the insurer's deteriorating reserves, Best stated.

Munich Re profits soar on sale of holdings

Munich Reinsurance Co.'s sale of stakes it held in Allianz A.G. Holding fueled a 215% rise in net income for the first half of 2002, to 4.098 billion euros ($4.02 billion). Munich Re's sale of shares in Allianz and Allianz Leben, as well as holdings in Frankfurter Versicherung and Bayerische Versicherungsbank, contributed 4.7 billion euros ($4.60 billion) to its first-half results. Those gains were tempered, though, by 1.5 billion ($1.47 billion) in writedowns on equity investments. Profits also were dented by a 383 million euro ($375.3 million) loss due to additional reserving for U.S. business. Premium volume from reinsurance rose 30.2% over the first half of 2001, to 13.2 billion euros ($12.93 billion), the Munich, Germany-based company said.

Investments reduce Swiss Re profits

Swiss Reinsurance Co.'s profits fell to 118 million Swiss francs ($79.3 million) for the first half of 2002, a 91% drop from the comparable period last year. Swiss Re blamed the decline in profits largely on an investment writedown of 917 million Swiss francs ($616.2 million) stemming from declining global equity markets. Net premiums at the Zurich-based reinsurer rose 16%, to 13.84 billion Swiss francs ($9.30 billion).

QBE profits down on investment losses

QBE Insurance Group Ltd. reported profits of $115 million Australian ($62.5 million) for the first half of 2002, a 5.7% decline

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Petrobras: Award may further tighten surety market

Continued from previous page

The bond for the P-19 project was written in the amount of $110.5 million, and the P-31 was written for $163 million.

John Horan, a partner with Fox Horan & Camerini in New York, a law firm representing the oil company, said premiums totaling about $7 million were paid on the two bonds.

Construction of the platforms resulted in substantial cost overruns, which Petrobras and Braspetro maintained was because the contractors had underbid. The companies consequently declared that the construction contracts were at fault and demanded that the surety companies meet their obligations. When the bond issuers refused, Petrobras and Braspetro completed the projects and tried again to recover the costs under the bonds.

In denying payment under the bonds, the insurers argued that Petrobras substantially changed the nature of the projects by making numerous alterations in the contract requirements without notifying the bond issuers. According to the insurers, those changes increased the costs of the projects. Furthermore, the insurers argued, the contractors were not actually in default because they were owed substantial amounts of money by the oil company.

'There may be a broad re-examination of net retained risk by direct writers and reinsurers.'

Mark Reagan
Willis North America

In rejecting the insurers' arguments, Judge Koeltl ruled that they were an "inaccurate after-the-fact reconstruction" of the way the construction contracts "were actually administered and performed."

Industry sources are considering how the award could affect the surety bond marketplace, which even before the ruling had seen some tightening.

"There may be a broad re-examination of net retained risk by direct writers and reinsurers," said Mark Reagan, New York and New Jersey-based chairman and chief executive officer of New York-based Willis North America's construction practice. "As they take less and some reinsurers exit or scale way back, I think it is inevitable that there will be less capacity."

Mr. Reagan said that "at least one or two major reinsurers may look at this as the final blow, say there is no way to make money at this and get out. That would lead to others scaling back."

Tom McCarley, Knoxville, Tenn.-based executive vp responsible for the construction practice at broker Palmer & Co., said the ruling's impact may be somewhat muted, because reinsurers have already been backing off such risks. "Reinsurers got very competitive before the market hardened late last summer," he explained, and some that had been writing excess-of-loss coverage on bond exposures were hit hard.

"They have been making insurers pay that back on an accelerated basis," Mr. McCarley noted, while reinsurers are upping their own attachment points to limit their exposure.

Reinsurers will be increasingly "redlining" offshore oil platform projects when offering coverage to surety underwriters, Mr. McCarley predicted. "If the primary surety wants to take it on, gross and net are the same number. To the best of my belief, some of that is already occurring."

Mr. Horan said he thinks that the "whole approach of how a surety company keeps up with a big international project is going to have to improve. They have to get on top of a project they have bonded."

The ruling will "certainly affect how they price them," he said of surety writers' approach to large projects, "and I would think it would affect how they write them."

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ATRIS: Buyers resent proposed mandatory coverage

Continued from page 29
risks.

A terrorist attack would have to cause more than $20 million Australian ($11.0 million) in damage to be covered by the plan. A federal minister or senior official would make a final decision as to whether a given event had constituted a terrorist attack.

Participation would be compulsory for all insurers and policyholders, in order to ensure a large pool of risks from which the plan could collect charges and to establish an adequate working fund. The Trowbridge report suggests that property location and use be considered to classify policyholders within rating structures.

If eight years were to pass without any terrorist event, the plan would be terminated and funds repaid to participants.

Kevin Mutch, group risk manager of the Melbourne, Australia-based global mining and resources company Rio Tinto Ltd., said his company is concerned that the wording for the proposed government plan is based on insurers' current global policy exclusions, which means that a broad range of events could be defined as terrorism.

Mr. Mutch said he also regards it as unfair that the Australian plan would be compulsory. "Whether we need this kind of insurance, we are going to have to pay it. If you are paying a premium for a scheme which covers workplace sabotage and your competitor is affected, you will subsidize them, or it might be a totally unrelated industry," he said.

Mr. Ferguson said the corporate sector could not afford the imposition of another levy because it is already paying higher premiums for most coverages and high taxes on policies.

Mr. Mutch said that his company is also concerned about the plan's structure. "It is an attempt to build up a fund quickly. If there are hits on the scheme, businesses will have to rebuild the fund," he said.

The government has tried to make the plan attractive by building it up to $10 billion Australian, Mr. Mutch said. "But what happens if we have an attack on the Harbor Bridge? Say the cost is $5 billion Australian ($2.76 billion). Corporate Australia has to find $5 billion Australian in its financial statements, because it will be a financial commitment under accounting provisions," he said.

Trowbridge consulted with insurance industry representatives—mainly insurers, reinsurers and brokers—on Aug. 14 and 15 and sought comments by Aug. 20, Mr. Ferguson said.

"Given the major ramifications of the proposal for ARIMA members—who collectively spend more than $4 billion Australian a year on insurance premiums—we sought an extension of time to consult the membership," he said. "That was refused."

"Unfortunately, but inevitably, the proposal from Trowbridge means insureds will pay what is virtually a levy on premiums for terrorism cover, even if they don't want it," he said.

Mr. Ferguson said the plan, if enacted as proposed, would carry no risk for the government, because if the loan and reinsurance facility were to be activated, the proposal makes it clear that premiums would be increased again to repay the loan and reinsurance facility.

"The Trowbridge report centers on the needs of the insurance industry, rather than the needs of those exposed to the risk and those who are expected to fund the proposed arrangements," he said.

Mr. Ferguson said the compulsory nature of the proposed plan is unfair because it would require some companies and government bodies to buy insurance they neither needed nor wanted.

He questioned whether the proposed arrangements would apply to risks that are located outside Australia but insured under policies issued in Australia, and whether fire service levies and stamp duties would be added to the proposed terrorism levy.

"There are too many unanswered questions and unfair elements in this proposal for it to receive ARIMA's support. However, we will consult our members and get their views," Mr. Ferguson said.

A spokesman for the Sydney-based Insurance Council of Australia, the body representing insurers, said the ICA had no comment on the proposal.

None of the major insurers consulted by Trowbridge was available for comment.

World Updates

Continued from page 29
from the same period in 2001. Gross premiums at the Sydney, Australia-based insurer increased 15%, to $3.5 billion Australian ($1.90 billion). The fall in profits stemmed from $60 million Australian ($33.0 million) in unrealized losses on investments, compared with investment gains of $22 million Australian ($12.0 million) in the prior-year period, QBE said.

Briefly noted

Financial guarantee insurer XL Capital Assurance Inc. has set up a subsidiary in London. The unit, **XL Capital Assurance (U.K.) Ltd.**, will offer credit enhancement products similar to those provided by its New York-based parent, said Michael Rego, managing director of XLCA-U.K. ...**Alexander Forbes P.L.C.**, the U.K. arm of South African broker Alexander Forbes Ltd., has acquired the insurance brokerage business of Dublin, Ireland-based K&H Insurance Management Services Ltd. Terms of the acquisition were not disclosed.

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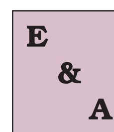

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Comings & Goings

Mr. Nagy

Mr. Russell

Mr. Novelli

Insurers:

Julio A. Portalatin has been named president of the accident/health division of American International Underwriters, the international property/casualty unit of New York-based American International Group Inc. Mr. Portalatin previously was president of the AIU Personal Lines Division. **Raymond Lee**, previously regional vp-personal lines of AIU's Far East region in Hong Kong, has assumed Mr. Portalatin's former position.

Dennis F. Plante has been named chief financial officer at North Palm Beach, Fla.-based AmCOMP Inc. He replaces **Donald L. Johnson**, who retired from the workers compensation insurer this year. Mr. Plante formerly was senior vp and controller of CNA Financial Corp. unit CNA Global Specialty Lines.

Reinsurance:

Matthew Shaw has been appointed managing director of ACE Tempest Re Europe in London. He formerly was director of the board of St. Paul Syndicate Management Ltd. and an underwriter for Lloyd's of London syndicate 340.

John Modin was named chief financial officer of PXRE Group Ltd., replacing **James F. Dore**, who will retire at the end of September. Mr. Modin was formerly CFO of Enterprise Reinsurance Holdings Corp.

Sean Whelan has joined the New York office of Willis Re Inc. as executive vp responsible for expanding the intermediary's professional liability and financial guarantee business. Before joining Willis Re, Mr. Whelan was the worldwide specialty leader for professional liability at Guy Carpenter & Co. Inc.

James E. Conroy has joined Aon Re U.S. as senior vp in the company's Stamford, Conn., office. He previously was a senior vp at General Reinsurance Corp.

Surplus lines:

Pro Financial Services Inc., a managing general agency in Schaumburg, Ill., has made three executive appointments: **Dennis Burns** was promoted to vice chairman from president; **Dan Burns** was promoted to president from chief operating officer; and **Dan Dressel**, formerly vp of human resources at Dean Foods Corp., was named COO.

Brokers:

Sean P. Coady has been named director of the technology team at Mazonson L.L.C., a Peabody, Mass.-based insurance brokerage. He previously was a corporate associate with Boston law firm Testa, Hurwitz & Thibeault L.L.P.

Peter Nagy has joined Acordia Inc. as property and casualty marketing director for the Northwest in Seattle. He previously was vp and Florida marketing manager for Aon Corp.

Health care:

California health care veteran **Bob Novelli** has joined Blue Shield of California in San Francisco as senior vp of consumer operations. Prior to joining Blue Shield, Mr. Novelli was regional vp for Aetna U.S. Healthcare, responsible for all customer service and claims operations in the western states. Earlier, Mr. Novelli served five years as vp of Regional Customer Service for PacifiCare of California and as corporate vp for PacifiCare Information Systems.

Anita Messal has been appointed senior vp of sales and business development at eBenX, a benefits administration system provider in Minneapolis. She previously served as vp of client and channel development.

Also at eBenX, **Marty Reader** has been named to the newly created position of senior vp of marketing and client management. Mr. Reader formerly was chief marketing officer for Iceberg International, an enterprise wireless Internet service developer.

Richard Russell has been named senior vp of information technology and business at Cogent Healthcare Inc., a provider of inpatient medical management services in Laguna Hills, Calif. Before joining Cogent, Mr. Russell was vp-information technology and business intelligence at Parkstone Medical Information Systems.

Dr. Brian Hayes has been named executive medical director-utilization management at Horizon Blue Cross & Blue Shield of New Jersey in Newark. Mr. Hayes came from Independence Blue Cross in Philadelphia, where he was a senior physician executive. He currently serves as vice chairman of the National Medical Management Forum for the Chicago-based Blue Cross & Blue Shield Assn.

Ben Cutler will step down from his position as president and CEO of Fortis Health to become executive vp of Fortis Inc. and chairman of Fortis Health. Don Hamm, currently senior vp and chief financial officer of Fortis Health, will become president of the Milwaukee-based insurer.

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Bond: Case twists rival a film plot

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sible for punitive damages

It is possible, however, that none of the arguments will be heard by the court if AISLIC and MGM reach a pretrial settlement. Los Angeles Superior Court Judge Peter Lichtman has ordered the parties to hold a settlement conference, which has been scheduled for Sept. 13 in Los Angeles, according to policyholder attorney William M. Shernoff, a partner in the Claremont, Calif.-based law firm of Shernoff Bidart & Darras.

A spokesman for AIG declined to comment on the pending litigation, and the insurer's outside counsel, Robert Lewis of Lewis, Brisbois, Bisgaard & Smith, did not return phone calls.

The copyright infringement case that spawned the coverage suit had about as many twists and turns as the plot of a James Bond film. It began in 1961, when Mr. McClory—who collaborated with Mr. Fleming on the development of plot lines and a film treatment for "Thunderball," as well as on the transformation of the literary James Bond into the cinematic 007 character—sued the author for writing a book that mirrored their joint work product. Because of the "Thunderball" dispute, another film, "Dr. No," in 1962 became the first James Bond film to reach the screens.

The McClory-Fleming litigation was resolved in 1963 by a settlement in which Mr. McClory acknowledged that Mr. Fleming was the creator and proprietor of the James Bond character, and Mr. McClory was given the film rights to the "Thunderball" novel and scripts. Mr. McClory then produced the film "Thunderball" in 1965. He also made the 1983 film, "Never Say Never Again," which was essentially a remake of "Thunderball." Meanwhile, Mr. Fleming sold his rights to James Bond to MGM and Danjaq, which went on to produce 18 other James Bond films.

But since that 1963 settlement, Mr. McClory claimed publicly that he had broader rights to the James Bond character, and in 1997 sold those rights to Sony Corp. Shortly afterward, Sony issued a press release announcing plans to produce a series of new James Bond feature films. MGM and Danjaq sued the competing studio and Mr. McClory in Los Angeles. Sony and Mr. McClory then countersued, seeking not only the rights to produce a rival James Bond series but also a share of the $3 billion in profits that MGM made over the years from the Bond movies it produced.

In 1998, the court enjoined Sony and Mr. McClory from producing any Bond films. A year later, all parties but Mr. McClory reached a settlement in which MGM and Danjaq kept the rights to the lucrative long-running spy series, and Sony got $5 million.

But Mr. McClory continued his battle with MGM and Danjaq, losing both at trial and on appeal to the 9th U.S. Circuit Court of Appeals, which produced a decision that attempted to be as creative as a Hollywood film script.

The Aug. 27, 2001, opinion, written by Justice M. Margaret McKeown, opened with: "Every so often, the law shakes off its cobwebs to produce a story far too improbable even for the silver screen—too fabulous even for the world of Agent 007. This is one of those occasions, for the case before us has it all. A hero, seeking to redeem his stolen fortune. The villainous organization that stands in his way. Mystery! International Intrigue! And no, not the least of all, the dusty corners of the ancient law of equity."

The opinion—which concluded with: "Closing Credits: So, like our hero James Bond, exhausted after a long adventure, we reach the end of our story."—affirmed the trial court's ruling that Mr. McClory's claim for the rights to the Bond films and character was barred because it was too old.

During the court battle with Mr. McClory, AISLIC rescinded the $50 million entertainment E&O policy it had issued to MGM in 1997 and renewed in 1998 for a three-year period. AISLIC asserted that MGM failed to disclose on its insurance application that a copyright claim over James Bond was likely.

Kevin McClory, pictured here in 1963 with heiress Bobo Sigrist at a London court, sued Ian Fleming for writing the James Bond novel "Thunderball."

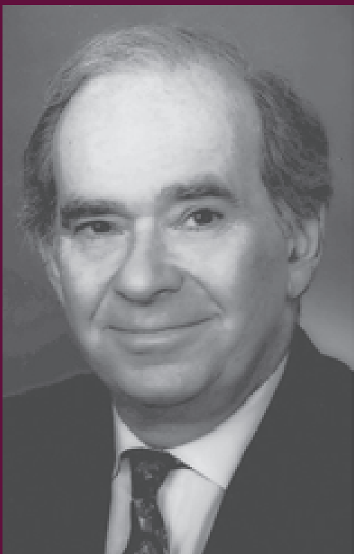
Because AISLIC was competing with Novato, Calif.-based Fireman's Fund Insurance Co. for MGM's business at the time, though, the underwriting terms were liberalized somewhat, according to MGM attorney Mr. Shernoff. Instead of providing specific information about potential claims, MGM was required only to provide the previous five years' loss runs, he said.

The Los Angeles Superior Court agreed, saying that because AISLIC issued an insurance policy to MGM after accepting only the loss runs, it had acquiesced to those more liberal underwriting terms.

Meanwhile, Fireman's Fund, whose own three-year $50 million in entertainment E&O policy to MGM was still in force, provided a defense to MGM. Because the Fireman's Fund policy was narrowed after the AISLIC policy was issued to cover only a few of the Bond films, though, it joined in MGM's coverage suit against AISLIC, seeking contribution.

Fireman's Fund and AISLIC settled out of court last month "with AIG paying a specific sum," according to Jaymeson Pegue, a partner with Nelson, Thompson, Pegue & Thornton in Los Angeles, who represented Fireman's Fund.

American International Specialty Lines Insurance Co. vs. Metro-Goldwyn-Mayer, et al., Los Angeles Superior Court. Case No. BC223707.



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Leonard 'Lenny' H. Minches

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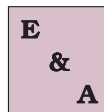

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The National League of Cities is seeking a senior level professional to be responsible for managing a technical and specialized service program for state league intergovernmental risk-sharing pools through the NLC Risk Information Sharing Consortium (NLC-RISC).

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Elisabeth McClain
Director, Human Resources
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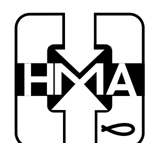

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LEGAL NOTICES

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
1992: NO 331
IN THE MATTER OF THE COMPANIES ACT 1981 AND IN THE MATTER OF
LONDON UNITED REINSURANCE COMPANY (BERMUDA) LIMITED
IN LIQUIDATION
NOTICE TO CREDITORS OF INTENTION TO DECLARE A FINAL DIVIDEND

TAKE NOTICE THAT a Second and Final Dividend is intended to be declared in the above matter.

It is anticipated that the Final Dividend will be paid on 30 September 2002, to creditors.

Enquiries regarding the Company should be addressed to:-

London United Reinsurance Company (Bermuda) Limited - in Liquidation, C/o PricewaterhouseCoopers, PO Box HM 1171, Hamilton, HM EX, Bermuda

Tel: 441-295-2000 Fax: 441-295-1242

21 August 2002

PETER C B MITCHELL *Joint Liquidator*

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WANTED: Preferred Personal Lines Auto Books of Business. An aggressive national insurer seeks to purchase books up to $200 million in size. Principals only can contact Hugh Alexander at (303) 825-7307 or **hugh@alexlawfirm.com**

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e-mail **iamleshi@crain.com**

LEGAL NOTICES | LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF DAN YORAM SCHWARZMANN, AS ADMINISTRATOR OF
FOLKSAM INTERNATIONAL INSURANCE COMPANY (UK) LIMITED
CASE NO. 02-B-14070 (PCB)

NOTICE IS HEREBY GIVEN that, pursuant to an order dated August 22, 2002 (the "Order") of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), in connection with the Petition filed on August 21, 2002, pursuant to section 304 of the Bankruptcy Code (the "Petition"), for **Folksam International Insurance Company (UK) Limited** (the "Company"), a hearing will be held on September 9, 2002 at 2:30 p.m. before the Honorable Prudence Carter Beatty in Room 701 of the Bankruptcy Court, One Bowling Green, New York, New York (the "Hearing"), to consider the Petitioner's Request for a Preliminary Injunction on the terms set forth below:

1. Enjoining all persons and entities from: (a) seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property; (b) commencing or continuing any action or legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; (c) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award obtained against the Company, and commencing or continuing any act or action or legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff, or other claim against the Company, or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance and retrocession contracts; (d) drawing down any letter of credit established by, on behalf or at the request of, the Company in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the trust, escrow or similar arrangement;

2. Requiring all persons and entities in possession, custody or control of property of the Company in the United States, or the proceeds thereof, to turn over and account for such property or its proceeds to the Petitioner;

3. Requiring all persons and entities that are beneficiaries of letters of credit established by, on behalf or at the request of, the Company, or parties to any trust, escrow or similar arrangement in which the Company has an interest, to (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioner to assess the propriety of such drawdown, withdrawal, setoff, or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff, or other application, and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff or other application, was made and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Petitioner for all funds resulting from such drawdown, withdrawal, setoff or other application, in excess of amounts expressly authorized by the terms of any contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; and

4. Providing, with respect to any claim, action, arbitration or other proceeding which may be commenced or become known to the Petitioner in the future, or the entitlement or alleged entitlement of any beneficiary of any letter of credit established by, on behalf or at the request of, the Company, or of any party to any trust or escrow agreement or similar arrangement in which the Company has an interest that is identified by the Petitioner in the future (each a "Subsequent Claim"), that:
(a) when informed of a Subsequent Claim, counsel for the Petitioner shall serve upon the holder of such claim a copy of the Summons, the Petition, the Verified Petition and the most recent Injunction Order entered by the Bankruptcy Court;
(b) the holder of a Subsequent Claim will have twenty (20) days from service of the Summons in which to file an Answer or Motion with respect to the Petition.

PURSUANT TO THE TERMS OF THE ORDER, A TEMPORARY RESTRAINING ORDER IS IN EFFECT ENJOINING ALL ENTITIES FROM TAKING ANY ACTION DESCRIBED IN PARAGRAPH 1 ABOVE.

All parties-in-interest opposed to the Petitioner's Request for a Preliminary Injunction must appear at the Hearing at the time and place set forth herein. All papers submitted for the purpose of opposing the Petitioner's Request for a Preliminary Injunction shall be filed with the Bankruptcy Court with a copy to the Chambers of the Honorable Prudence Carter Beatty and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received on or before September 5, 2002 at 5:00 p.m. New York time, except that the foregoing is without prejudice to the right of any party-in-interest to seek, upon appropriate notice and hearing, to terminate or limit the Temporary Restraining Order. The Order and supporting papers will be made available upon request at the offices of the Petitioner's United States counsel at the address below.

Chadbourne & Parke LLP
Attorneys for the Petitioner
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5100
Attn: Howard Seife, Esq.

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Chart & Online Directory: 401(k) Plan Administrators
Bonus Distribution: ASHRM
Closing: September 24

Conflict: Fees on fees coverage

Continued from page 1

tial financially ruinous fees, attorneys concur. As a condition of accepting a directorship or a top management position, an executive should insist that the organization cover fees on fees coverage, and that's enforceable," said insurer attorney Dan A. Bailey, a partner with Arter & Hadden L.L.P. of Columbus, Ohio.

"You can provide in your bylaws for fees on fees coverage, and that's enforceable," said insurer attorney Dan A. Bailey, a partner with Arter & Hadden L.L.P. of Columbus, Ohio.

"It's something (directors and officers) should look at in this age of trying to maximize your financial protection," advised Mr. Bailey, a D&O specialist who was not involved in either case.

"I think it points out the importance of tailoring bylaws to address various situations, rather than taking a cookie-cutter approach that doesn't address all circumstances," observed D&O policyholder attorney Carolyn Rosenberg, a partner with Sachnoff & Weaver Ltd. of Chicago. Ms. Rosenberg was not involved in either case.

Mr. Rhine noted that the 2nd Circuit panel's decision also "does not affect in any way the right of a director to negotiate with corporations by contract to get fees on fees" coverage. "It's very easy to do," he said. "If a director is so sought after, he can write his own check."

D&O policyholder attorney Jesse Finkelstein, a partner with Richards Layton & Finger P.A. of Wilmington, Del., concurred. Referring to the 2nd Circuit panel's ruling, he said, "I would think that in light of this decision, that separate contracts—if they exist—will be reworked" to cover fees on fees. Mr. Finkelstein was not involved in either case.

In the 2nd Circuit case, Phillip Siegel and several fellow officers and directors of Health Management Systems Inc. were named as defendants in securities fraud class-action litigation in 1997. Mr. Siegel had joined the New York-based revenue management company as its chief financial officer just a few months earlier.

The lawsuits alleged that the defendants enriched themselves by fraudulently inflating HMS stock and then selling their personal shares. Because of his short tenure with HMS and the fact that he had purchased—not sold—HMS stock during that period, Mr. Siegel hired a separate defense attorney.

Mr. Siegel's move complicated the other defendants' defense, which was heavily dependent on Mr. Siegel's conduct as the company's CFO, explained Mr. Rhine, HMS' attorney.

Ultimately, Mr. Siegel was dismissed from the litigation and the other defendants settled with the plaintiffs for $4 million.

> **'I think it points out the importance of tailoring bylaws to address various situations, rather than taking a cookie-cutter approach that doesn't address all circumstances.'**
> *Carolyn Rosenberg*
> *Sachnoff & Weaver Ltd.*

National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of New York-based American International Group Inc., wrote HMS' D&O insurance and covered the settlement, according to Mr. Rhine. But, because Mr. Siegel hired a separate defense attorney over National Union's objections, HMS refused to cover his defense costs.

Mr. Siegel, who no longer is with HMS, sued the company to recover his D&O defense costs and his additional legal costs from his effort to obtain reimbursement.

A federal magistrate in late 1999 and a federal district court judge in early 2000 ruled that Mr. Siegel was covered only for his original defense costs.

Mr. Siegel appealed to the 2nd Circuit. The appellate court panel ruled a year ago that HMS had not acted in bad faith and, therefore, Mr. Siegel was not entitled to his fees on fees under a case law doctrine known as "the American Rule."

The case returned to the 2nd Circuit over whether Mr. Siegel was entitled to the fees under the New York Business Corporation Law. Because of a lack of case law on the issue in New York, the 2nd Circuit panel asked New York's highest court, the New York Court of Appeals, for guidance. The state court ruled that the state's corporation law does not direct companies to cover fees on fees.

The 2nd Circuit panel also ruled that HMS' bylaws do not entitle Mr. Siegel to coverage. Mr. Siegel argued that the bylaws extended the coverage by stating HMS would cover "actually and reasonably incurred" fees.

On June 13, Delaware's high court overturned a lower court's decision and ruled that state law provides for corporations to cover fees on fees. The ruling "prevents a corporation from using its 'deep pockets' to wear down a former director, with a valid claim to indemnification, through expensive litigation," the court explained. It added, though, that corporate bylaws could bar coverage for such fees.

Mr. Rhine suggested that both decisions were technically correct. He said New York's business corporation statute as well as "extensive statutory history" clearly show that companies incorporated in New York have no legal obligation to cover fees on fees. The Delaware corporation statute, however, "contemplates fees on fees," he said.

The 2nd Circuit panel's ruling, which upholds longstanding New York law, also avoids "blindsiding" D&O insurers with a risk for which they did not collect premium, according to Mr. Rhine.

Mr. Siegel's attorney, Dennis J. Block of Cadwalader, Wickersham & Taft in New York, did not return calls.

Thomas Baker et al. vs. Health Management Systems Inc., 2nd U.S. Circuit Court of Appeals, July 23, 2002; No. 00-7736.

Share your Sept. 11 recollections

As we approach the anniversary of the tragic events of Sept. 11, 2002, *Business Insurance* invites readers to share their thoughts and recollections on how the terror attack affected them and the industry at large.

The Online Forum area of *www.businessinsurance.com* is a feature designed to allow readers to exchange ideas and information. *Business Insurance* has created a special discussion topic, "Sept. 11 Recollections" to allow readers to share their words on the tragedy with colleagues and others. The forum invites such postings as:

- Where you were and what you were doing when the attacks occurred.
- Remembrances of colleagues or loved ones lost in the disaster.
- Your thoughts on how the tragedy has affected you personally and the industry as a whole.
- Opinions on how well or poorly the insurance industry has responded to this disaster.

Please visit *Business Insurance*'s Online Forum in the weeks to come to share your thoughts and please return often to read the thoughts and recollections of others.

PHOTO: AP/WIDE WORLD

BI 09-02-02 A 36,37 8/30/02 5:32 PM Page 1

PROPERTY/CASUALTY INSURERS' 2002 FIRST-HALF RESULTS

Ranked by change in net income. All amounts in thousands of dollars.

	Corporate			Property/casualty operations					
	Net income	Percent increase (decrease) 2001-2002	Consolidated 2002 revenues	Combined ratio 2002 [1]	Combined ratio 2001 [1]	Premiums written 2002	Percent increase (decrease) 2001-2002	Policyholder surplus 2002	Percent increase (decrease) 2001-2002
Argonaut Group Inc.	$13,584	521.4%	$209,732	105.7%	137.5%	$202,362	152.9%	$266,106	(13.1)%
American Financial Group	53,900	473.4	1,843,800	101.4	105.7	1,282,100	(6.6)	1,677,000	(2.4)
Ohio Casualty Corp.	39,937	218.1	859,639	107.8 [2]	114.1 [2]	750,147 [2]	(1.4)	763,235	(3.8)
SAFECO Corp.	168,800	118.8	3,510,900	107.9	115.2	2,271,900	–	2,162,500	(8.6)
CNA Financial Corp.	113,000	107.7	6,770,000	108.2 [2]	209.0 [2]	4,930,000 [2]	36.2	6,340,000	25.8
Royal & SunAlliance USA	64,000	39.1	N/A	107.2	104.7	1,384,000	(18.9)	2,538,000	(16.9)
Chubb Corp.	408,400	26.9	4,328,700	97.0	101.7	4,305,000	27.7	3,985,200	7.8
RLI Corp.	19,059	24.3	177,309	96.7	97.1	188,673	21.0	287,203	4.0
ACE Ltd.	301,705	20.7	3,163,584	92.2	97.5	3,861,406	20.5	6,383,807	15.5
American International Group	3,781,500	19.3	32,795,900	94.9 [2]	95.7 [2]	13,116,900 [2]	32.2	N/A	N/A
Old Republic International	203,073	15.7	1,297,064	99.4	102.3	599,993	16.0	1,572,316	8.6
Hartford Financial Services Group Inc.	477,000	2.4	7,785,000	99.5	102.9	4,203,000	7.8	5,802,000	(1.9)
Cincinnati Financial Corp.	110,159	(9.4)	1,390,027	101.9 [2]	101.4 [2]	1,246,417 [2]	14.7	2,538,845	(3.1)
Travelers P/C Corp.	434,100	(47.2)	6,552,500	100.2 [2]	100.4 [2]	5,820,600 [2]	20.8	7,645,200	1.2
The St. Paul Cos.	(90,000)	(129.4)	4,631,000	116.2 [2]	105.5 [2]	3,895,000 [2]	5.3	4,876,000	(17.8)
Kemper Insurance Cos. [2]	N/A	N/A	N/A	105.1	106.0	1,224,025	(9.8)	1,575,711	(23.3)
Liberty Mutual Insurance Co. [2]	N/A	N/A	N/A	107.0	114.1	5,312,000	11.3	5,554,000	(15.9)
Cumulative	$6,098,217	82.0%	$75,315,155	101.4%	111.3%	$54,593,523	17.1%	$53,967,123	(1.7)%

1 Including dividends 2 Statutory N/A - Company did not provide data
Source: *BI* survey

Results: Hard P/C market expected to be prolonged

Continued from page 2

stabilization of the investment income."

Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co., said that rates increased even faster in the second quarter than they did in the first quarter, particularly in areas such as directors and officers liability. That line, he said, has been plagued by stock market troubles and the growth in class-action suits.

Stephan Petersen, vp at Cochran, Caronia & Co. in Chicago, said, "Overall, (the second quarter) was probably the first quarter we saw some serious evidence of fundamental improvement in the industry."

"We're starting to see better underwriting selectivity," which is improving margins, Mr. Petersen said. Furthermore, "we saw pretty strong evidence of good cash flows," with the industry's asset base growing again. "It looks like we're finally getting past" the poor 1997-2000 accident years, he said.

Insurer results were in line with expectations, said Brian Meredith, senior property/casualty insurance analyst with Banc of America Securities in New York. "I expected that investment income would continue to be weak for many companies, which it was. And, in addition to that, we had a fair amount of realized losses from some troubled credits, which popped up from several companies.

"As far as underwriting results go, you began to see a little bit of the benefits of the rising price environment that we've been in since 2000," though these were moderated by reduced investment income, Mr. Meredith said.

"There weren't many big surprises from a bottom-line earnings standpoint. Top line premium growth in many cases was better than we had expected and also in many cases showed acceleration from the first quarter," said Jay Cohen, an analyst with Merrill Lynch & Co. in New York.

> **'Our perspective is that interest rates are more likely to drop than rise, which we think is going to keep insurers focused on underwriting margins.'**
>
> *Stephen Petersen*
> *Cochran, Caronia & Co.*

Underwriting margins "showed, in general, nice improvement over the recent trend," helped by relatively low catastrophe losses, he said. "The only disappointing aspect of the second quarter was investment income, which was hurt by lower interest rates and, in some cases, lower income from partnership investments," Mr. Cohen said.

John Ward, chairman and chief executive officer of Cincinnati-based Ward Group, said that, for many years, poor underwriting results and strong investment gains characterized the industry's financial performance.

Now, though, "that dynamic has completely reversed," with underwriting results and discipline "looking pretty positive" while investments "are not holding up their end of the bargain and, in many cases, are having a negative impact on the bottom line."

Analysts expect stronger financial results for the foreseeable future, with most predicting the hard market will continue at least through 2003.

"I had been anticipating the cycle would kind of stagger to its conclusion next year," said Bear Stearns' Mr. Smith. "But now, I think that with the changed economics in the industry, principally a more volatile earnings stream in the year ahead...coupled with a lower contribution from their investment portfolios," insurers will need to keep prices up to meet investor expectations, said Mr. Smith. "I think we can see prices remain firm throughout 2003."

"It looks like underwriters are certainly a long way from being tempted by market share again. Our perspective is that interest rates are more likely to drop than rise, which we think is going to keep insurers focused on underwriting margins," said Cochran's Mr. Petersen, who said he expects the hard market to extend into 2004.

"A lot of companies seem to be using the price increases to strengthen the balance sheet rather than let it fall to the bottom line, and they're doing it to a greater extent than I might have expected six months ago," said Mr. Ransom of Conning. As a result, it could be another year before the rate hikes are fully reflected in earnings, he said.

Mr. Ransom said he anticipates rates will continue to rise for the Jan. 1, 2003, renewals, though "after that, it's a question mark."

Reserves, however, remain an issue, say analysts. "Certainly, even for companies that have historically held adequate reserves, we're seeing the level of adequacy decline," said Karen Davies, senior credit officer with rating agency Moody's Investors Service in New York. "And then there's other companies that we believe have historically not held adequate reserves, and we've seen the level of adequacy deteriorate for them as well," she said.

Letters to the Editor

Continued from page 8

ket.

But assuming that risk management has actual value other than to pare down insurance costs—for things like quality, efficiency, reputation, ethics—who will remain to advise and assist senior managers at the level of "roll up your sleeves and get it done?"

Carl J. Kotheimer
Risk Manager
Consolidated Risk Management
Cleveland

Broader view of risk not limited by insurance

To the editor: Your recent articles on how D&O exposures can provide risk managers with an opportunity to demonstrate their understanding of a broader range of risks provided a good starting point for the discussion of enterprise risk management.

Unfortunately, the inference was that risk managers are *entitled* to look at this area because it is somehow connected to insurance. While most risk management functions evolved from insurance buying, today's risk manager cannot afford to be limited to those areas that have an impact on insurance and claims.

A more comprehensive approach to enterprise risk management begins with the corporate objectives and includes noninsurable areas, such as regulation, strategic risks, competition and a wide range of operational risks, such as supply chain management, information technology and intellectual property. While no one person can be an expert in all of these fields, risk managers must be the focal point to coordinate the various resources within a company. This will not only lead to improved risk management, it will also serve as a springboard for the risk manager's career.

John Schaefer
Vp of Enterprise Risk Management
ABD Insurance
& Financial Services
Redwood City, Calif.

Fire: Surplus lines industry concerned

Continued from page 3

cantly limit the effectiveness of terrorism exclusions," the Insurance Services Offices Inc. said in a statement (*BI*, Feb. 11).

A recent survey by the law firm of Edwards & Angell L.L.P. identified states whose regulators are requiring surplus lines policies to include standard fire policy wording: Arizona, California, Connecticut, Georgia, Iowa, Louisiana, Maine, New Hampshire, New York, Oregon, Pennsylvania and Rhode Island.

It is less clear whether surplus lines insurers must provide fire-following coverage in at least a dozen other states, where only admitted insurers are required to write traditional fire-following coverage. The survey identified those states as including: Hawaii, Idaho, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Oklahoma, Virginia, Washington, West Virginia and Wisconsin.

Meanwhile, regulators responding to a related *Business Insurance* survey say the situation is even murkier elsewhere. For example, Nebraska's standard fire policy statute "appears to apply to all fire policies issued in Nebraska," though the Nebraska Insurance Department does not have the authority to require surplus lines insurers to cover such losses, a department spokesman said. In the event of a disputed claim, "it is possible that the court would look to the requirements" of the mandatory coverage statute, the spokesman said.

From NAPSLO's perspective, regulators in nearly all states still lack the authority to review surplus lines forms and rates, so it is technically possible for an insurer to exclude fire-following coverage, Mr. Bouhan said.

He and other industry observers, though, question how courts might interpret exclusionary language in surplus lines policies. They wonder whether judges and juries, reviewing claims litigated after some future terrorist attack, might be swayed by those states' historic public policies of requiring admitted insurers to provide fire-related coverage and opt to ignore the exclusionary wording in the surplus lines policies.

Given the new fire-following rule and the potential for litigation, nearly all states' lack of authority to regulate surplus lines forms becomes "a difference without a distinction" for consumers, Mr. Bouhan said.

For an insurer, though, having to write a risk with fire-following coverage "is putting its balance sheet on the line," said John P. Mulhern, an attorney in the Newark, N.J., office of LeBoeuf, Lamb, Greene & MacRae L.L.P. Mr. Mulhern stressed that he was speaking personally and not on behalf of his insurer clients, which include underwriters at Lloyd's of London.

The New York Insurance Department is using a legal opinion as the basis for its position that any policy delivered by a surplus lines broker in the state must include fire-following coverage, said Mark Presser, chief examiner and assistant deputy superintendent in charge of the department's Property Bureau. New York's Insurance Department also chairs the Surplus Lines Task Force of the National Assn. of Insurance Commissioners.

New York's position is not surprising; most states' current policies and court interpretations on standard fire coverage are based on the 1943 New York policy form.

The coverage under a standard fire policy typically protects a policyholder from most direct losses or damage by fire and lightning, as well as removal from the premises, according to ISO. It does not apply to potentially related losses, such as business interruption or extra-expense coverage.

In addition, the standard fire policy excludes war-related risks. But according to ISO, courts have generally interpreted that provision conservatively, ruling that it applies only to conflicts between sovereign nations, and not those involving terrorists.

Given these limitations, ISO has filed two types of terrorism exclusions, depending upon whether or not a given state had a standard fire policy law. Regulators in most states generally have approved those exclusions while specifying some minimum benefit levels. Some notable exceptions, though, include California, Florida and New York.

While terrorism exclusions may be more meaningful in states that mandate fire-following coverage, observers agree that questions remain about how courts would respond to litigated claims.

"Should a claim arise, the exclusion may be difficult to sustain in a litigation context," Mr. Bouhan said.

Litigation over a claim following a terrorist attack, which would take place in an emotionally and politically charged environment, is "a gigantic risk" for a surplus lines insurer, Mr. Mulhern said. A judge would likely feel pressured to find coverage, even in spite of the existence of exclusionary language, he said.

Some observers, though, do not foresee such a scenario.

"I believe that the insured would not prevail in attempting to include coverage not underwritten, but declaration-of-coverage court proceedings have not always been predictable," said Wayne Salen, director of risk management for Niagara County in Lockport, N.Y.

It would be difficult to argue in court that regulators intended that there be fire-following coverage if the department is not requiring surplus lines insurers to offer it, said a spokesman for the Missouri Insurance Department. "Applying the language to the nonadmitted market would defeat the purpose of surplus lines, which, by law, is supposed to offer coverages not found in the admitted market," he said.

The spokesman noted, though, that "any judge or jury might render a verdict that the defendant fears, regardless of merit."

To cope with this uncertainty, "insurance buyers, even those in states with standard fire policies, need to carefully read their policies to ensure that they are getting the coverage they want," said John P. Dearie Jr., an attorney in the New York office of Edwards & Angell.

A risk manager should obtain the fire-following coverage for any and all perils, Mr. Salen suggested. If such coverage proves impossible to secure, he said, the risk manager should ensure that senior executives are made aware of the coverage gap.

35 Rising Stars

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Terror: Industry confidence growing on relief bill

Continued from page 1

"I'm optimistic that Congress will act. It's been slow going, but this is a major new program and that's how the legislative process works," said Francis D. Bouchard, senior vp and director-federal affairs for Zurich Financial Services Group in Washington.

"There are not a lot of outstanding issues; there are a few big ones. But once those are resolved, the rest of the issues can fall into place very easily," said Julie Rochman, senior vp with the American Insurance Assn. in Washington.

Perhaps the biggest difference between the two bills is structural. The Senate bill—the Terrorism Risk Insurance Act of 2002—would put the federal government in the position of reinsurer if total losses from a future terrorist act were to exceed $10 billion and $15 billion in the second year. At that point, the government would pick up 90% of the losses, up to $100 billion in losses. Individual companies could enter into cost-sharing arrangements with the government if their losses from a particular event were to exceed their commercial market share. The government would pick up 80% of the cost above that retention, and insurers would not be required to pay back the government's share.

The House's Terrorism Risk Protection Act, by contrast, would create a loan guarantee program. Insurers could seek government loans if industry aggregate losses were to reach $1 billion. Individual insurers that suffered losses of more than both 10% of surplus and 10% of commercial lines net written premium if annual insurer terrorism-related losses were to exceed $100 million could seek loans after that lower trigger had been activated. Insurers, though, would be required to repay the government.

The bills also differ in the way they approach tort questions. The Senate is silent on tort issues; a lack of consensus in this area is the key reason senators took more than six months longer to agree on a bill than did their House counterparts. The House bill contains tort provisions that its architects say are needed to protect some victims of terrorism from being victimized a second time by civil suits.

When Risk & Insurance Management Society Inc. members met congressional staff members during Hill visits in late July, "there was a great deal of optimism" that the staffs could work out differences over the August recess, said Mike Phillipus, vp-external affairs for New York-based RIMS.

Instead, the basic loan vs. quota-share question, disagreements over individual company retentions and the tort concerns will "require extensive negotiations" on the part of lawmakers themselves, said Mr. Phillipus, who is also manager-risk management for Pennzoil-Quaker State Co. in Houston. "But we're hopeful it can be worked out."

Mr. Phillipus noted that a federal backstop is "somewhat a touchy issue" for lawmakers because of the criticism they received over aid to airlines in the wake of Sept. 11. A program "can't been seen as a bailout for the insurance industry."

> **'I am increasingly optimistic that we will get a terrorism backstop reinsurance program enacted' because the reasons for doing so are getting stronger.'**
>
> *David Farmer*
> *Alliance of American Insurers*

Zurich's Mr. Bouchard added that, in addition to what he called "big-picture" issues, conferees will also have to address technical matters, such as definitions and transitional details.

"The president has been adamant about having a bill on his desk by Sept. 11, and I think this ought to be a reachable goal," said Joel Wood, senior vp-government affairs with the Council of Insurance Agents & Brokers in Washington.

"I don't think this is easy—you have two completely different structures—but I also don't think there is any distance between the two sets of provisions that can't be reached," Mr. Wood said. "You're going to wind up with some sort of a hybrid."

Outside forces may propel the conferees toward resolution, some observers say.

"I am increasingly optimistic that we will get a terrorism backstop reinsurance program enacted by the 107th Congress, because the reasons for the enactment of this program actually are getting stronger," said David Farmer, senior vp-federal affairs in the Washington office of the Alliance of American Insurers. "From the perspective of an insurance underwriter, the world is a more dangerous place" than it was before Sept. 11, 2001, he said.

He cited the ongoing military operation in Afghanistan, intensification of the Palestinian-Israeli conflict and the talk of U.S. military action against Iraq, along with repeated warnings of possible terrorist attacks on the United States, as factors that "clearly warrant some kind of a reinsurance program."

"Reinsurance markets continue to exclude terrorism coverage and continue to underwrite on terrorism-only offerings on a very selective basis. The capital that has flowed into the insurance industry is insufficient to satisfy the demands for coverage at affordable terms," Mr. Farmer said.

Julie Gackenbach, director-government relations in the National Assn. of Independent Insurers' Washington office, pointed to the speed with which House and Senate conferees managed to work out differences in their approaches to corporate governance reform as a reason for optimism.

"Once we finally broke through and got conferees, particularly in the wake of the corporate governance conference, this is a good sign we'll move forward. The conferees for both bills are virtually the same, and these members were able to work productively and quickly on the corporate governance bill," Ms. Gackenbach said, noting the spirit of bipartisanship on corporate governance reform.

"This legislation has had a thousand lives, and the way it's got enough left in it to get over the finish line," said the AIA's Ms. Rochman.

Pensions: Proposal would benefit plan sponsors

Continued from page 1

est rate assumption compared with current law to value their pension liabilities and the contributions they are required to make to the plans.

The ERISA Industry Committee, a Washington-based organization that represents many of the nation's largest employers on benefit issues, now is presenting its proposal to legislators and pension regulatory agencies.

Benefit experts note that legislators are aware of the need for change and warn that if Congress doesn't make changes in how pension liabilities are calculated, employers will have to put more money than necessary into the plans, leaving less for other vital corporate purposes.

"There could be a diversion of capital that companies could use to hire people or invest in technology, and there is less for the day-to-day operations of a company," said Kevin Wagner, a consultant with Watson Wyatt Worldwide in Southfield, Mich.

"There is a clear recognition that something has to be done," said Janice Gregory, an ERIC vp and a former congressional staffer.

Interest rate assumptions are a critical component in determining how much money employers are required to contribute to their pension plans. The lower the interest rate assumption, the greater will be the reported liabilities—and, consequently, the contributions required to fund them. Generally, when pension plans are less than 90% funded, employers must accelerate plan contributions.

Under current law, employers value their pension liabilities by using an interest rate that is tied to the yield on 30-year Treasury bonds. For the 2002 and 2003 plan years only, employers can use a range of 90% to 120% of the four-year weighted average of the yield on 30-year Treasury bonds.

But, absent a change in the law, starting in 2004 employers will be required to use a range of 90% to 105% of the four-year weighted average yield on 30-year T-bonds. Employers had to use that same formula before Congress earlier this year responded to employer lobbying and temporarily raised to 120% from 105% the top end of the interest rate corridor.

That temporary change came after employer groups, including ERIC, argued that declining rates on the 30-year Treasury bond were forcing employers to make millions of dollars in unnecessary contributions to their pension plans.

The 30-year Treasury bond rate, which has fallen in recent years as the government has paid down debt, took a further tumble last year when the government announced it was suspending the sale of the bonds.

As supplies of the long bond dwindle, that results in an artificially low interest rate, exacerbating the problem of employers needing to make large, unnecessary contributions to their plans, employer groups contend.

Although employers got some relief from the temporary increase of the interest ceiling in the formula used to value pension liabilities, it is only a temporary fix, and a permanent remedy is needed, said Ms. Gregory.

> **'If Congress fails to act, companies will have to make big 'contributions to their plans...funds that could be better spent growing the business.'**
>
> *Michael Johnston*
> *Hewitt Associates Inc.*

In analyzing the issue, ERIC found that no government debt security was appropriate as a component in an index to value pension liabilities. "They have nothing to do with pension funding," Ms. Gregory said.

A more appropriate debt instrument, she said, would be the interest rate on long-term, high-quality corporate bonds. Such bonds make up a large proportion of the assets held by insurers that sell annuities, and the yields on those bonds figure in the rates the insurers assume when they sell annuities. When employers terminate fully funded pension plans, they must purchase annuities from insurers to cover the benefits promised to participants.

"You want something that is more reflective of annuity purchase rates," said Michael Johnston, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Under the ERIC proposal, the interest rate assumption would be a composite of the rates on four long-term, high-quality bond indexes: Moody's Aa Long Term Corporate Bond Index, Merrill Lynch 10+ High Quality Index, Salomon Smith Barney High Grade Credit Index and the Lehman Brothers Aa Long Credit Index.

In addition, the Treasury Department would have authority to issue regulations to replace any index that, for example, ceases to be published.

ERIC's Ms. Gregory estimates that the new method for valuing pension liabilities, combined with a new mortality table proposed by the Society of Actuaries for estimating longevity, would result in an interest rate assumption about 1.5 percentage points greater than the four-year weighted average of the yield on 30-year Treasury bonds using the 90% to 105% range.

That resulting higher interest rate could easily make the difference between a plan being considered adequately funded and being considered underfunded, requiring the sponsor to make additional contributions.

As a rough rule of thumb, pension actuaries say that for every 1% decrease in interest rate assumptions, plan liabilities increase by between 12% and 15% and, for reporting and contribution purposes, can turn an overfunded plan into an underfunded plan.

If Congress fails to act, companies will be forced to make "huge contributions to their plans...funds that could be better spent growing the business," said Hewitt's Mr. Johnston.

In the longer term, ERIC warns that forcing employers to use artificially low interest rates to value pension liabilities weakens employers' interest in maintaining their pension plans.

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For the Record

This roundup of news from the previous week is generated by *BI*'s daily news reporting. To get breaking news as it occurs, log on to *www.businessinsurance.com*, or sign up online for free *BI* Daily News by e-mail.

PPOs added as Medicare+Choice option

The federal government gave approval to 33 health plans in 23 states to offer, as part of a demonstration project, PPO coverage to retirees who opt out of the traditional Medicare program. Adding PPOs as a Medicare+Choice option "gives seniors access to affordable benefits and choices that currently are widely available in the private market," said Karen Ignagni, president and chief executive officer of the American Assn. of Health Plans, a Washington-based managed care trade group. The new option, will become available to retirees in January, comes as Medicare HMOs, have been faltering. The number of people enrolled in Medicare HMOs, also known as Medicare+Choice plans, has fallen since 1999 by 700,000, to 5.6 million.

OSHA reorganizing to reach out to employers

The Occupational Safety and Health Administration is reorganizing to provide more outreach services to employers. The reorganization creates a new Office of Partnerships and Recognition and a new Office of Outreach Services and Alliances. According to OSHA, both new offices are designed to reach out to employers. OSHA is also consolidating the Safety and Health Standards directorates into a single Office of Standards and Guidance.

Hold-harmless pacts don't violate ERISA: DOL

Hold-harmless or indemnification agreements between pension plans and actuarial firms providing services to the plans do not, in and of themselves, violate the Employee Retirement Income Security Act, the Labor Department announced in an opinion advisory letter released last week. The advisory comes after efforts by several actuarial and benefit consulting firms to limit their liability to pension plans to the greater of $250,000 or one year's fee for any damage caused to a client regardless of the cause of action.

Former UHC vp sentenced in insider-trading case

Former United HealthCare Corp. Vp Michael Mooney has been sentenced to more than three years in prison and ordered to pay $150,000 on charges of insider trading. Mr. Mooney was convicted in October 2001 of buying options to purchase Minneapolis-based United HealthCare stock in 1995 while he was a member of a company team investigating the potential acquisition of McLean, Va.-based MetraHealth Cos. Inc. Mr. Mooney later sold the securities he purchased with the options and made a profit of about $275,000.

Town president convicted over health plan fraud

Federal prosecutors went to court last week to recover some of the $12 million that former Cicero, Ill., Town President Betty Loren-Maltese and five others were found guilty of skimming from the town's self-insured health plan. The same U.S. District Court jury that convicted Ms. Loren-Maltese—who, under Illinois law, lost her office upon conviction—and five co-defendants of racketeering, conspiracy and fraud will now consider whether to force the defendants to forfeit up to $10 million in assets. Prosecutors charged that the health care funds were siphoned off through a bogus third-party administrator, Specialty Risk Consultants Inc.

PHOTO: AP/WIDE WORLD

Cicero, Ill., Town President Betty Loren-Maltese lost her office after she was convicted of skimming funds from the town's self-insured health plan.

PBGC takes over Harvard Industries plans

The Pension Benefit Guaranty Corp. has taken over and terminated six underfunded pension plans sponsored by Harvard Industries Inc., a bankrupt automotive parts supplier. The Harvard Industries' plans are underfunded by a total of about $97 million, with about $116 million in assets and $213 million in liabilities, according to the PBGC. The plans have about 9,100 participants.

N.Y. health plans to offer statewide coverage

Three nonprofit health insurers in New York have joined forces to offer coverage across a broad service area. The insurers—Independent Health Assn. Inc. of Buffalo, Preferred Care Inc. of Rochester and MVP Health Care of Schenectady—developed the OnePoint Alliance to provide statewide coverage for employers that will eliminate the need to contract with multiple companies. The three plans collectively have more than 1 million enrolled members.

Briefly noted

A federal appeals court upheld the 2000 felony conviction of suspended **Louisiana Insurance Commissioner Jim Brown**. Mr. Brown, who was convicted of lying to the Federal Bureau of Investigation during interviews about a state settlement with Cascade Insurance Co., has vowed to take his appeal to the U.S. Supreme Court....**The National Conference of Insurance Legislators** announced plans to establish an office in Washington, probably by Oct. 1. Timothy Tucker of Alexandria, Va., who currently works as director of state government affairs for the Independent Insurance Agents & Brokers Assn., will head the new office for Albany, N.Y.-based NCOIL and serve as the organization's representative in Washington, beginning Sept. 23....James F. Billett Jr., chairman, president and chief executive officer of **Trenwick Group Ltd.**, has taken a leave of absence for health reasons. W. Marston Becker, Trenwick's vice chairman, has been named acting chairman and acting CEO of the Hamilton, Bermuda-based reinsurer.

Online Poll [8/26 - 8/30]

How would you characterize the need for federal terrorism insurance relief today?

Response	Percent
Still crucial	78.8%
Less urgent	13.9%
No longer needed	7.3%

Take part in our weekly poll at *www.businessinsurance.com*

No consensus on stock rules

By ARLEEN JACOBIUS

When it comes to company stock in defined contribution plans, two recent surveys indicate many plan sponsors are unsure of what to do.

At minimum, there is no clear consensus on how sponsors with company stock in their plans expect to treat these investments. Nearly a quarter of 401(k) assets—22%—are in company stock, and one-third of companies with matching contributions in company stock place restrictions on its sale or transfer, according to a study by Spectrem Group, a Chicago-based consulting firm.

Employers most likely to offer company stock as an investment option are those with more than $200 million in defined contribution plan assets, Spectrem found. In addition, plans that offer company stock both as a core investment option and in matching contributions have the highest proportion of plan assets in company stock, according to Spectrem's survey of 100 plan sponsors with at least $50 million in assets.

Still, one-third of sponsors with $100 million or more in plan assets said they intend to change the way company stock is used in their plans. But 57% of those plan sponsors aren't sure what changes they will make. Eighty-three percent did not make changes to their matches in 2001.

Of those 401(k) plan sponsors that know what modifications they are planning to make to their matching contributions, 24% will change the age at which participants can sell their stock, 10% will limit the amount of company stock that participants can hold, and 10% said they will let participants buy more company stock.

Only a few companies limit the proportion of company stock in a participant's account. None of the companies that offers company stock both in matching contributions and as an investment option limit how much participants can hold.

A second study also completed this year by Hewitt Associates Inc. in Lincolnshire, Ill., found that 38% of plans surveyed made all or part of their matching contributions in company stock, and 86% of them placed restrictions on the transfer of the stock. Also, 36% of the 200 plan sponsors surveyed place some additional restriction on participants' ability to transfer from the company stock fund, once they are eligible to diversify.

Few plan sponsors took action last year, either by easing restrictions or deciding not to. Thirteen percent of sponsors eased restrictions on the transfer of company matching contributions in 2001, and 8% decided to leave transfer opportunities unchanged, Hewitt found. Twenty-seven percent are "very likely" to let participants diversify out of company stock, but 22% were "very likely" to leave diversification restrictions unchanged.

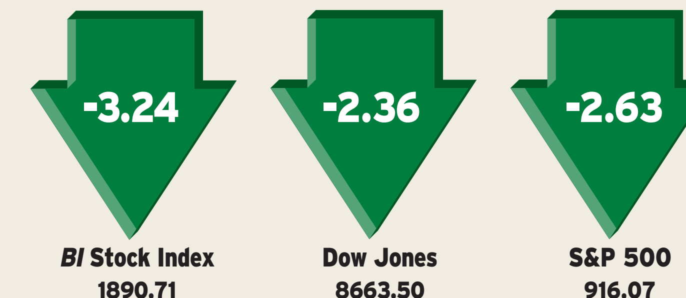
"Plan sponsors have looked at overall structure of their plans given market volatility, but there has not been a lot of change," said Lori Lucas, a defined contribution consultant for Hewitt.

Arleen Jacobius is a reporter for Pensions & Investments, a sister publication of Business Insurance.

BI Stock Index [8/26 - 8/30]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com*

Percentage change of *BI* Stock Index vs. key indicators



Largest gains		Largest losses	
Seibels Bruce Group	22.22%	Acceptance Insurance	-16.67%
Odyssey Re Holdings	7.07%	Argonaut Group	-14.53%
Travelers P/C	4.11%	Sierra Health Services	-12.66%
Willis Group Holdings	3.93%	SCOR	-8.05%
Clark Bardes Holdings	3.66%	Allmerica Financial Co.	-7.29%

Weekly change by market segment

Segment	Change
Brokers	1.39%
Insurers/Reinsurers	-2.70%
Managed Care Organizations	-1.47%

Source: CNET Investor (investor.cnet.com)